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Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 706 VSB

5 LAP SENG NG,

6 Defendant.

7 -----x  
8  
9 May 11, 2018  
10 10:30 a.m.  
11  
12 Before:  
13 HON. VERNON S. BRODERICK,  
14 District Judge  
15  
16 APPEARANCES  
17  
18 GEOFFREY S. BERMAN,  
19 United States Attorney for the  
Southern District of New York  
20 JANIS ECHEBERG,  
DOUGLAS ZOLKIND,  
DANIEL CHARLES RICHENTHAL,  
21 Assistant United States Attorneys  
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## 2 APPEARANCES (Continued)

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4 KIRLAND & ELLIS, LLP,  
5 Attorneys for defendant Ng  
BY: ANDREW M. GENSER, Esq.  
CHENG ZHANG, Esq.  
ERIN MURPHY, Esq.  
7 Of counsel

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Also Present:

11 DAVID A. LAST, DOJ, CRIMINAL DIV., FRAUD SECTION  
12 JEAN YAP, CANTONESE INTERPRETER  
KWOK KEI NG, CANTONESE INTERPRETER  
FRANCISCO OLIVERO, Observer, Interpreter's Office

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1 (In open court)

2 (Case called)

3 THE COURT: Thank you. You may be seated.

4 So we're here today for sentencing. Mr. Ng, can you  
5 hear and understand the interpreter?

6 THE DEFENDANT: Yes, yes.

7 THE COURT: If at any point in time you have  
8 difficulty hearing or if you don't understand something I say,  
9 or if you want to speak with your attorneys, just let me know  
10 and we'll stop the proceedings and I'll allow you to do that,  
11 okay? Also the interpreters have to speak up so the Court  
12 Reporter can hear.

13 THE INTERPRETER: He did say okay in English.

14 THE COURT: Thank you. So as an initial matter, I  
15 want to review for the parties the materials I've received and  
16 reviewed in connection with today's sentencing.

17 Specifically, I have received the presentence  
18 investigation report which was initially prepared on October  
19 27th, 2017 and revised on February 26th, 2018, which includes a  
20 recommendation.

21 I also have received the defendant's sentencing  
22 submission which is dated March 2nd, 2018, which has  
23 approximately 60 attachments that include letters from Mr. Ng's  
24 family members, friends throughout his life, business  
25 colleagues, employees, former employees, recipients of

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1 charitable gifts, various photographs, a list of Mr. Ng's  
2 charitable donations totaling approximately I think \$22 million  
3 over the course of several years, and Defense Exhibit 60, which  
4 is a letter from Nu Beng Cao.

5 I also have a letter which I believe -- I think I  
6 circulated to the parties yesterday from Lin Chu Sung, Lin Chu  
7 Sung who is a friend of over 40 years. That letter has  
8 approximately 19 attachments, the majority of which appear to  
9 be in different language. However, there are portions of those  
10 attachments that where there is a translation that appears in  
11 those documents.

12 There are various articles, I think some official  
13 documents, but things of that nature. I also have a letter  
14 from Dr. Steven Weiss, which is dated October 27th, 2017, who  
15 is another acquaintance and friend of Mr. Ng's.

16 I have the defendant's supplemental letter, dated  
17 April 19th, which objects to the government's forfeiture  
18 request. I think that may be resolved, but we'll talk about  
19 later. It objects to the government's request for remand and  
20 reserving the right to seek bail pending appeal and objecting  
21 to various arguments and factual assertions made by the  
22 government in sentencing submission and, finally, in  
23 principally attaching the affidavit of Joel Ziegler, who is an  
24 expert, who proffers to be an expert in prison conditions and  
25 designations.

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I also have the government's sentencing submission which is dated March 30th, 2018, which includes various attachments. Those are certain of government exhibits that were presented to the jury during the trial and were admitted in evidence during the trial as well as I think at least two summary exhibits. I also have the government's April 27th, 2018 supplemental letter addressing the affidavit of Joel Ziegler.

In addition, I've got various documents relating to, first, immigration, I think documents that support and relate to a proposed order relating to a judicial order of removal, and I also have a restitution order as well as I believe a forfeiture-related order that the parties have agreed to.

I think I was recently handed certain of those documents which have been executed. So have the parties received each of the submissions and have they been filed on ECF? Let me hear from the government?

MS. ECHEBERG: Yes, your Honor, we received all of those documents that you referenced, some of which we have provided to the court. I would note that the two letters that your Honor circulated by email, I don't believe those have been filed on Pacer, so I don't know if the court will do that or you like us to do that.

THE COURT: We were going to. I asked my Deputy Clerk to hold off until we had this proceeding to make sure there

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1 wasn't anything in there that either party thought should be  
2 redacted, but my Deputy Clerk will take care of filing that if  
3 there is no objection, filing those two documents.

4 MS. ECHENBERG: Yes, there is nothing the government  
5 is aware that needs to be redacted.

6 We'll hear from the defense on the removal order,  
7 forfeiture order and the restitution order. Those were all  
8 provided in draft to the court, and we have now, as you noted,  
9 provided copies that the parties have signed the forfeiture  
10 order, a copy of the removal order that the defense has signed,  
11 and then just a clean copy of the restitution order for the  
12 court's signature. None of those have been filed on Pacer. We  
13 thought they would be filed by the court after they were  
14 executed.

15 THE COURT: That's correct. We'll take care of once  
16 they're executed, having those filed on the docket. Thank you.

17 Mr. Genser, first with regard to all of those  
18 documents, have you received each of those documents and if you  
19 could just let me know whether there is an objection to the  
20 filing of the two letters that I forwarded to the parties  
21 yesterday?

22 MR. GENSER: Yes, we have received all of those  
23 documents, your Honor, and we have no objection to the filing  
24 of the two letters that went directly to the court.

25 THE COURT: Okay. We'll take care of them. My Deputy

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1 Clerk will take care of filing those two letters as well as the  
2 attachments to the one letter that I mentioned. Mr. Genser,  
3 have you received and read the presentence -- let me ask.  
4 Sorry. Are there any other submissions that I should have in  
5 connection with today's sentencing?

6 MS. ECHENBERG: Nothing the government is aware of.

7 THE COURT: Mr. Genser?

8 MR. GENSER: I am not sure if your Honor referenced  
9 it, but there was an email from the court to the government  
10 Thursday evening, 5:09 pm. That probably ought to be noted,  
11 but we have received a copy of it as well.

12 THE COURT: I apologize. I did receive an email in  
13 response to my order I think of May 9th, asking certain  
14 questions, asking about certain documents. The government  
15 provided responses to certain of those questions, and we'll go  
16 over their responses in a moment.

17 MS. ECHENBERG: What we had noted in the email, we  
18 tended to make the same representations on the record, so we  
19 can do that, but we have no objection to the email being filed  
20 on Pacer if your Honor thinks it is probably --

21 THE COURT: We'll probably do both. We'll file the  
22 email with the attachments on the docket and we'll discuss  
23 later on my order and the responses.

24 Some of the responses, just to give you a sense of how  
25 I intend to handle it, I will ask you specifically about before

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I ask for your comments related to sentencing. Others I will just say you can refer those as you make your specific comments to me with regard to sentencing here.

So, Mr. Genser, have you read the presentence report and discussed it with Mr. Ng?

MR. GENSER: Yes, your Honor, we have.

THE COURT: Mr. Ng, have you read the presentence report or has it been read to you?

THE DEFENDANT: Yes.

THE COURT: Have you discussed it with your attorneys?

THE DEFENDANT: Discussed.

THE COURT: Have you had an opportunity to go over any errors in the report with them or anything else that you feel should be taken up with me?

THE DEFENDANT: Yes, all of them with my attorney.

THE COURT: Mr. Genser, I note in the defense submission you've objected to the PSR, to the extent that it relies on the complaint filed in this action and also more generally I think to the facts that characterize the payments to Ambassador Ashe and Mr. Lorenzo as bribes, essentially challenging, at least in part challenging and preserving the argument that Mr. Ng is innocent.

So let me ask this. And, in addition, raises the issue of the PSR's reference to certain other defendants who were involved in other aspects of their deals with Mr. Ashe and

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1 Mr. Lorenzo, specifically defendants Peow and Yan.

2           While I don't believe there is any objection -- well,  
3 I will find out from the government. With regard to those  
4 references where Mr. Ng was not involved, obviously I am not  
5 specifically relying on those in connection with determining  
6 what an appropriate sentence is here today, and I take the  
7 Probation Department was merely providing the total picture of  
8 this entire case which included those defendants.

9           So putting to the side for the moment the objections,  
10 specific objections to the guideline calculation, I guess the  
11 question I have is are there -- and also the, in essence, the  
12 overall objection to facts that are characterized, the payments  
13 as bribes and things that would be characterized as going to  
14 the jury's determination of guilt, do you have any specific  
15 objections to the specific paragraphs?

16           In other words, are there inaccuracies in those  
17 paragraphs? I think certain of them you pointed out, which is  
18 one the defense position wasn't that certain funds of the  
19 \$200,000 were utilized to pay for travel expenses. You  
20 indicated that that was not part of your argument. Are there  
21 objections to specific paragraphs that we should deal with  
22 today and I should resolve so that where everyone is in  
23 agreement with regard to the allegations in the presentence  
24 report?

25           MR. GENSER: Yes. Thank your Honor. We noted a few

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1       in our sentencing submission, one of which your Honor just  
2       referred to. The other one was to Paragraph 48 of the PSR. It  
3       is referenced on Page 34 of our memorandum, Footnote 50, and it  
4       is just related to the characterization of our position on the  
5       payments to Terra Trading.

6                  THE INTERPRETER: Counsel, the interpreter requests  
7       counsel repeats the last sentence.

8                  MR. GENSER: It relates to the characterization of the  
9       defense position about the payments to Terra Trading, and so  
10      that is noted in our submission.

11                 The report, the presentence report, states that  
12      defense counsel contends that Terra Trading payments were not  
13      monthly, but irregular since some of the payments were for  
14      legitimate purposes. What we noted in our submission is that  
15      that's not correct. Our position was that all of those  
16      payments, from Mr. Ng's perspective, were legitimate and were  
17      for the purpose of lobbying in and other legitimate activities  
18      like brochures to build support for the center. That was the  
19      only other clarification that I don't think your Honor had  
20      mentioned.

21                 In addition, there is one other, not a matter or  
22      thing, a small inaccuracy on Page 41. In the addendum to the  
23      presentence report there is a suggestion I think towards the  
24      bottom of the page that Cao Yanchia, otherwise known as Forest  
25      Cao, was a witness who testified at Mr. Ng's trial. As the

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1 court knows, that is not accurate.

2 THE COURT: Sorry. Where exactly is that?

3 MR. GENSER: It is the second to last sentence on Page  
4 41.

5 THE COURT: Who testified, yes. So I would  
6 characterize at least the last one as factual inaccuracy. I  
7 will either make a notation on the presentence report itself or  
8 more likely indicate in the judgment that that is inaccurate.

9 With regard to the representations of defense counsel,  
10 I think the record is clear what the defense position is. I  
11 won't make those changes to the presentence report, but I  
12 recognize both of those changes, that the defense's position is  
13 other than what is stated in the presentence report. Again  
14 those are arguments and not factual assertions, although  
15 they're based on factual assertions.

16 Is there anything else?

17 MR. GENSER: Just two other items, your Honor.

18 THE COURT: Yes.

19 MR. GENSER: One I am not sure if it is intended to be  
20 a factual assertion or not. It is part of the presentence  
21 report recommendation on Page 45. There is an assertion, I can  
22 help your Honor find it, there is an assertion Mr. Ng  
23 rationalized his conduct as somewhat commonplace at the UN. I  
24 am not sure if that was intended as a factual assertion or more  
25 supposition or explanation of the Probation Office's reasoning.

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1           To the extent it is suggested as a factual assertion,  
2 we object to that. We don't think there is any evidence that  
3 Mr. Ng has ever taken the position that his conduct was bribery  
4 or that he's rationalized it in a particular way. We just note  
5 that as an objection to the extent it is considered a factual  
6 assertion.

7           THE COURT: Okay. Also just so the record is clear,  
8 my understanding is that Mr. Ng did not have substantive  
9 conversations in his presentence investigation interview  
10 related to the charges in this case.

11           MR. GENSER: That's correct, your Honor. We were  
12 present for that.

13           The other final point is more a matter of form. While  
14 we're very appreciative the Probation Office recognized a  
15 downward variance is warranted, we do object to the sentencing  
16 recommendation of 72 months as being too harsh in light of the  
17 circumstances, and we'll discuss this.

18           THE COURT: Yes, yes, and I recognize that, okay?  
19 Thank you. Ms. Echenberg, does the government have any  
20 objections to the report?

21           MS. ECHEMBERG: Nothing more than the back-and-forth  
22 that we already had with Probation which is noted in the  
23 report.

24           THE COURT: Thank you. So as an initial matter, I  
25 find there is nothing improper about the Probation Department

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1 relying on the criminal complaint filed in this action, among  
2 other things, as support for the offense conduct section. I  
3 presided over the trial in this matter and I am completely  
4 familiar with the facts of this case as well as the exhibits  
5 that were offered and admitted in evidence.

6 The issue is whether or not the information in the  
7 presentence report is accurate, and so we've discussed those  
8 that the defense believes are inaccurate and I'll make the  
9 appropriate notations in the judgment to deal with that.

10 So with that in mind, I adopt the factual findings in  
11 the report. Obviously, I think I made this clear, but to the  
12 extent I did not, to the extent the arguments made by the  
13 defense implicate the facts, obviously you preserved your  
14 arguments with regard to those in connection with your  
15 sentencing submission.

16 Now, however, just to be clear, and I may discuss this  
17 a little bit later on as I discuss some of the submissions that  
18 I have received in this case for sentencing. I adhere to my  
19 findings with regard to the defendant's post-verdict motions  
20 for acquittal and my ruling earlier this week with regard to  
21 the defendant's motion for a new trial, although I recognize  
22 that there are obviously going to be various issues or may be  
23 various issues raised in this case on appeal, based upon my  
24 presiding over Mr. Ng's trial and the jury reached a reasonable  
25 and just verdict based upon the evidence presented.

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1                 Now, the presentence report will be made part of the  
2 record in this matter and placed under seal. If an appeal is  
3 taken, counsel on the appeal may have access to the sealed  
4 report without further application to me or one of my  
5 colleagues.

6                 Now, Mr. Ng, the law requires as part of determining  
7 what an appropriate sentence is for you that I reference a set  
8 of rules known as the sentencing guidelines. The guidelines  
9 are a set of rules that are published by the Sentencing  
10 Commission, and they're designed to assist judges like myself  
11 when we impose sentences on people convicted of crimes.

12                 Now, although at a certain point in time the  
13 guidelines were mandatory, which would have meant I would have  
14 been required to follow them in almost every instance, however,  
15 they're no longer binding. I am still, however, required to  
16 consider them as one factor, among others, in determining what  
17 an appropriate sentence is for you.

18                 In a sense, the guidelines are a starting point for my  
19 making that determination. So my first task is to determine  
20 what the sentencing range is under the guidelines, but before I  
21 outline my calculations and finalize them with regard to the  
22 guideline range, I'd like to discuss the various objections  
23 that have been made to the guideline calculation by the  
24 defense.

25                 Now, specifically by my estimation, the defense

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1 objects in several ways to the calculation:

2 First, to the value that is placed on the bribes, the  
3 enhancement for there being multiple bribes, the enhancement  
4 because the offense involved an elected public official or any  
5 public official in high level decision-making or a sensitive  
6 position, and to the role adjustment.

7 Let me ask Mr. Genser, are those the specific  
8 guideline calculation objections? Have I left anything out is  
9 my question?

10 MR. GENESER: I think you have got them all, your  
11 Honor.

12 THE COURT: Let's discuss each in turn.

13 So, Mr. Genser, do you have anything to add to the  
14 defense submission concerning the value of the bribes?

15 MR. GENESER: No, your Honor. We stated our position  
16 fully in our papers.

17 THE COURT: Does the government have anything to add  
18 to its submission with regard to the value of the bribes?

19 MS. ECHENBERG: Your Honor, I will just briefly  
20 address it.

21 THE COURT: Sure.

22 MS. ECHENBERG: I think the important thing to keep in  
23 mind with regard to the bribe amount is that there are a number  
24 of different ways to calculate it in which the bribe amount is  
25 easily above the 550,000. So we have broken it into four

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1 different categories, and I'll just briefly cover those  
2 categories.

3 The first is the evidence of the payments from Mr. Ng  
4 directly to Mr. Lorenzo through Terra Trading, and that total  
5 is \$350,000, and there was ample -- the number I have. Do you  
6 have a different number?

7 THE COURT: No. In Government Exhibit 1501 and 1502?

8 MS. ECHEBERG: I am talking about the wires that  
9 went -- there are other payments to Terra Trading, and that  
10 might be why your Honor is focused on that makes the number  
11 higher, but the wires that came directly from either Mr. Ng or  
12 his company. I can give you the dates on those, your Honor.  
13 Those are on February 5th, 2013, May 19th, 2014, September  
14 23rd, 2014, and February 18th, 2015.

15 THE COURT: So you're excluding the March 24 and March  
16 26th of 2014?

17 MS. ECHEBERG: We are not, to be clear, we are not  
18 excluding it. Let me start with the payments to Mr. Lorenzo  
19 that were purportedly for his work at --

20 THE COURT: Yes.

21 MS. ECHEBERG: Mr. Leung's testimony that at least  
22 part of what he was paid for, was to promote the UN support for  
23 the Macau Center. We argue at least a portion of those  
24 payments were bribe payments, but even if you were to set those  
25 aside, there are three additional categories that we think are

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1 very clearly bribe payments.

2 So you have the South South News payments, right, and  
3 those came in a number of forms. Those were paid to Mr. Leung  
4 to pay his rent. Those were paid to Mr. Leung through his  
5 brothers and sisters, and in some instances those were paid  
6 through Terra Trading. That is one category.

7 The second category is the agreement that Mr. Leung  
8 and Mr. Ng make that Mr. Ng will pay even more money, \$30,000 a  
9 month on top of that South News salary for Mr. Leung's even  
10 more specific focus on the UN center. That is the categories I  
11 am talking about now that is over \$300,000 of additional  
12 payments. So you have that category.

13 There was ample evidence of Mr. Leung's testimony, the  
14 sham contract, the timing of those payments which I can review,  
15 but I think your Honor knows the facts well that that shows  
16 were clearly bribe payments. You have the no-show job, which  
17 we think is another category we believe is clearly bribe  
18 payments. That is another \$327,000. Then you have the  
19 \$200,000 payment to --

20 THE COURT: I am sorry. Are you saying that Ms.  
21 Cherian was paid \$327,000?

22 MS. ECHEBERG: Yes, and that is reflected on  
23 Government Exhibit 1502. Then we have \$200,000 to the Ashe PGA  
24 account.

25 THE COURT: I thought the consulting payments were

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1 32,500 or something like that.

2 MS. ECHENBERG: Let me just look at the exhibit.

3 (Pause)

4 MS. ECHENBERG: I apologize. I was conflating two  
5 things. The \$325,000 is Ms. Cherian's salary and the \$200,000  
6 payment to the Ashe PGA. That together is well over the  
7 550,000 number that we need to meet, again not even including  
8 the South South News salary which we think at least in part  
9 there was testimony that that was at least in part a bribe.  
10 There was also testimony about another \$20,000 cash payment.  
11 So we think it is easily above the \$550,000, and the Probation  
12 Department agrees with that analysis.

13 THE COURT: All right. Mr. Genser, would you like to  
14 respond in any way?

15 MR. GENSER: Yes, your Honor. We don't want to  
16 relitigate the issues here. Your Honor presided over the  
17 trial. Obviously, we have made arguments. Arguments were made  
18 at trial none of those payments have been established to be  
19 bribes.

20 Just with respect to briefly the argument that the  
21 Terra Trading contract was a sham contract, I would like to  
22 remind the court that the testimony was that Leung forged the  
23 name on the contract. It was Mr. Ng's desire to have a  
24 contract. Leung forged a name on the contract because he  
25 didn't want to be bound by it. So the question it raises is if

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1 Mr. Ng wanted to have a contract to make sure that Leung was  
2 going to have something he would be bound by and have to honor,  
3 why would he also want it to be a sham contract?

4 There was no testimony Mr. Ng knew the contract that  
5 Mr. Leung thought it was false. I also note there was evidence  
6 at trial that the significant amount of those monies that went  
7 to Terra Trading were used to pay for things like brochures and  
8 marketing materials developed by Christian Batres to showcase  
9 the idea of the Macau Conference Center. That is all part of  
10 why we argue that the evidence doesn't establish that Mr. Ng  
11 intended those to be contract payments.

12 THE COURT: Let me ask this, which relates to I guess  
13 a little bit a question I had asked in my order. As a legal  
14 matter, does it, in other words, does the law require that  
15 payments that are bribes or that are argued to be bribes, that  
16 they go to pay someone's personal expenses or go to pay some,  
17 for some other illicit activity, or is it really whether or not  
18 the payments themselves are in relation for, in this case,  
19 whether you say official acts or for actions taken the person,  
20 the bribed recipient is my question.

21 I understand the factual argument and the argument  
22 that with regard to the payments, the argument that Mr. Ng had  
23 that perception and that is what it was going to be used for.  
24 I am talking about as a legal matter.

25 Whoever wants to --

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1                   MR. GENSER: I am happy for the government address it  
2 and we are happy to respond.

3                   MS. ECHEBERG: Your Honor, I think we have addressed  
4 this in our submission, but the critical issue is whether the  
5 payments are designed to influence the official, and we think  
6 the timing here makes that so clear.

7                   For example, there is a \$60,000 payment to Terra  
8 Trading on February 5th, 2013, and then Leung springs into  
9 action, begins his discussions about revising the UN document  
10 to include the Sun Kian improved almost immediately after these  
11 discussions, and there are multiple examples of that set forth  
12 at trial.

13                  THE COURT: Mr. Genser.

14                  MR. GENSER: Yes, your Honor. I think this point is  
15 more applicable to the question of the \$200,000 payment to the  
16 PGA account, which I think the trial record is clear there is a  
17 lot of evidence that the way that was presented to Mr. Ng at  
18 least was it was to help pay for a UN sponsored concert where  
19 the original backer had backed out of it, and Mr. Ashe was  
20 requesting a donation so the concert could go forward.

21                  The concert did go forward and Mr. Leung testified  
22 that he attended the concert. The precise question the court  
23 is asking, can that legally, is it our position legally that  
24 can't be a bribe because it went to a PGA account as opposed to  
25 someone personal?

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I think we do have an argument, and it is rooted in the statutory language. Section 666, which is the bribery statute, applies to a bribe offered or paid to any person, and the FCPA, that is Section 666 (a)(2), the FCPA applies only to a bribe offered or paid to an official, foreign official, political party official thereof, candidate, any person conduit for the foregoing, and I can provide the statutory cite, the FCPA statute, your Honor.

A donation to the office of the PGA is none of the foregoing, and so we think basically under the plain language of the statute, that payment can't qualify as a bribe. It is just to a recipient who is recognized as being capable of a bribe recipient under the statute.

Our second argument is the one your Honor referenced is that it goes to the intent. To give a donation to a UN office for a UN purpose speaks to the intent of Mr. Ng, which was to do just what it was, just make a donation to help out with the concert, and that was his intention.

THE COURT: Okay. All right. Thank you.

Now, I find there is ample evidence in the record, including the testimony of Mr. Leung, the bank and other financial records and emails to support the bribe payments to Ashe and Leung from defendant Ng and affiliated entities, between 550,000 and \$1.5 million, warranting the 14 level increase. Those payments are summarized, as I think the

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1 government pointed out, in Government Exhibits 1501 and 1502.

2 Those bribes include, by way of example, the following  
3 payments there are certain wire transfers and I think my  
4 addition is a little different. If you look at the items that  
5 are denominated wires from either Mr. Ng or the Sun Kian Group,  
6 I calculated it a little more than what the government came  
7 out. I calculated it as 370,000, but whether it is 370 or 350,  
8 the records will bear that out.

9 In addition, those are the records I think that I had  
10 for Mr. Ng, and again there is a reason why I became a lawyer  
11 and not a scientist, I don't do math, but there is also a wire  
12 from Sun Kian Group \$90,000 February 18th of 2015.

13 Then there is also the purported consulting payments  
14 to John Ashe's wife which the defense had calculated as  
15 approximately \$32,500.00. I find there is more than ample  
16 evidence presented during the trial that defendant Ng was aware  
17 of these payments, including in documents and conversations,  
18 and that these payments were not for consulting services  
19 provided by Mr. Ashe's wife.

20 Now, with regard to the \$200,000 payment to the bank  
21 account or one of the bank accounts of John Ashe as President  
22 of the General Assembly, or at least I think that may be the  
23 notation, that may be the account name, I'm not entirely sure.  
24 In any event, there was evidence in the record that Ashe  
25 expressly said that he would not go to Macau and that Ng

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1 requested that the trip be an official visit, and there was  
2 some testimony I think during the trial what that meant.

3 In any event, Ashe traveled to Macau with his chief  
4 along with other UN officials, including Leung, in March of  
5 2015 and that was before the \$200,000 was wired to one of  
6 Ashe's accounts.

7 There is also evidence that this money was not only to  
8 encourage or to get Mr. Ashe to travel to Macau for the  
9 official visit, but was also used to compensate Ashe for  
10 officials action, and again this is an inference from the  
11 evidence that could be drawn from actions, official actions  
12 already taken, like the official UN document and the revised UN  
13 document, and to get Ashe to take other official actions on  
14 behalf of Mr. Ng.

15 For example, on May 22nd, 2014, Leung sent an email to  
16 Jeff Yin stating, "Jeff, see the bank account of the PGA  
17 office. Try to send the wire as soon as possible, and when you  
18 send it, let me know so that I can advise him. There are a lot  
19 of things that we need to be done" -- excuse me -- "there are a  
20 lot of things that need to be done. He want to know when Ng  
21 will come here. I am working to get things we need."

22 Now, those things, and again either directly or  
23 indirectly, the inference can be drawn that needed to be done  
24 included, among other things, applying for Mr. Ashe to a  
25 certain extent Mr. Leung to apply pressure or influence on

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1 Yiping Zhou, and obtaining a pro bono agreement, among other  
2 things.

3 On June 1st of 2014, the \$200,000 was wired by South  
4 South News to one of Mr. Ashe's PGA accounts. The evidence  
5 presented at trial was sufficient to establish certainly by a  
6 preponderance that the \$200,000 was, indeed, a bribe.

7 It is also a fair inference that after the October  
8 2010 discussion that Leung testified he had with defendant Ng  
9 about building a conference and meeting center in Macau and  
10 need to obtain an official document from the UN, that Leung's  
11 job certainly, in his mind -- and I think the facts bear this  
12 out -- changed and he took actions in his capacity as an  
13 ambassador to the UN to obtain the official documents because  
14 he was being paid.

15 I think that is what he indicated. Therefore, from  
16 that point on, at least a portion or all of it, I don't know as  
17 a legal matter, when there is a change here, whether or not  
18 there is a division; in other words, whether you would only  
19 include a portion of the 20,000 or all of the 20,000.

20 What is clear is that Mr. Leung didn't decline to do  
21 this as part of his job, and by "job," I mean actually  
22 exercising his powers as an ambassador to ensure that official  
23 actions were taken in connection with that. So I find  
24 certainly at least a portion of that 20,000, if not all of it,  
25 could be from that point on, that October 2010 time period, be

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1       considered a bribe to be used to influence both ambassador and  
2       PGA President Ashe as well as other members of the UN regarding  
3       the Macau Center and including to obtain official documents and  
4       other things in connection with that.

5                 However, even using the late 2012 date that the  
6       defense argues was the first point at which Mr. Ng became  
7       interested in pursuing a UN conference center in Macau, the  
8       \$20,000 a month payments to Mr. Leung, at least by my  
9       calculation, would amount to somewhere in excess of \$400,000  
10      from that point forward to the conclusion, to the arrest of  
11      Mr. Ng.

12               So I find there is more than ample evidence that  
13       proves by a preponderance of the evidence that the value of the  
14       bribes was at least \$550,000, but less than \$1.5 million, okay?

15               Let's next discuss the enhancement for multiple  
16       bribes. Mr. Genser, do you have anything to add with regard to  
17       the arguments that are made in your papers with regard to that  
18       issue?

19               MR. GENSER: We don't, your Honor.

20               THE COURT: Does the government wish to be heard with  
21       regard to that issue?

22               MS. ECHENBERG: No, your Honor.

23               THE COURT: All right. I find that the evidence is  
24       more than sufficient to establish by a preponderance of the  
25       evidence that there was more than one bribe here. As an

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1 initial matter, and as the government points out, there were at  
2 least the evidence shows two recipients of the bribes that the  
3 jury could have found, Mr. Ashe and Mr. Leung.

4 That in and of itself means there are multiple bribe  
5 payments and separate bribe payments. I'm not necessarily, in  
6 making my comments, although I don't know whether as a legal  
7 matter the payments that went as consulting payments to  
8 Ambassador Ashe's wife, I don't know as a legal matter that  
9 would count as payments to Mr. Ashe or whether as a legal  
10 matter you could still under the guidelines count that as a  
11 separate bribe.

12 In any event, I think based upon the separate payments  
13 to Mr. Ashe and Mr. Leung, I find that the enhancement is  
14 appropriate. In addition, there were multiple payments over  
15 the years of the existence of the scheme, and they were done at  
16 certain periods of time, and certain times they were done to,  
17 in essence, spur activity, get activity done.

18 In fact, at least on one or more occasion the payments  
19 were withheld so that to encourage, entice or what have you Mr.  
20 Leung specifically to take action. In addition, I think it is  
21 a fair inference from the evidence that certain payments were  
22 made to Mr. Ashe to actually get him to make those payments,  
23 and there were exchanges of emails from Mr. Ashe indicating  
24 prior conversations with the defendant concerning promises to  
25 support the PGA. I find that those payments also could be

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1 considered separate payments. So I think the enhancement is  
2 entirely appropriate here.

3 Let's discuss the enhancement because the offense  
4 involved an elected public official or any public official in  
5 high, a high decision-making or sensitive position. Mr.  
6 Genser, do you have anything to add to your papers with regard  
7 to that issue?

8 MR. GENSER: We do not, your Honor.

9 THE COURT: Does the government have anything to add?

10 MS. ECHENBERG: No, your Honor.

11 THE COURT: So with regard to here, too, with regard  
12 to this enhancement, I find that the evidence was sufficient to  
13 establish by a preponderance of the evidence that the offense  
14 did involve an elected official, public official or public  
15 official in a high decision-making, sensitive position. As an  
16 initial matter, the application notes to this section of the  
17 guidelines containing the definition of public official states  
18 that public official shall be construed broadly.

19 Second, according to the application notes, the  
20 definition of public official includes, among other things, "an  
21 individual who: One, is in a position of public trust with  
22 official responsibility for carrying out a government program  
23 or policy; two, acts under color of law or official right; or,  
24 three, participates so substantially in government operations  
25 as to possess de facto authority to make governmental

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1 officials.

2 Then it is in parens, "e.g., which may include a  
3 leader of a state or local political party who acts in the  
4 manner described in this subdivision."

5 I think that the description there both taken together  
6 are illustrative and not necessarily exclusive, but I also  
7 point to the Second Circuit's decision in United States versus  
8 Bahel, B A H E L, which indicated that the UN is a public  
9 international organization, and 2C1.1 specifically was meant to  
10 cover employees of the United Nations.

11 In that case, the Second Circuit also stated, "it is  
12 difficult to imagine how the defendant there, Bahel, could not  
13 be considered a high-ranking UN official since he was chief of  
14 the commodity procurement section within the United Nations  
15 procurement division. While this position may not have been  
16 the same as that of a representative of a member state, in  
17 other words, I would say an ambassador, it is far from being a  
18 baggage porter to which Bahel now seeks to compare himself."

19 Now, the court goes on to state the guidelines  
20 expressly refer to the sentencing of individuals at public  
21 international organizations as appropriately considered in the  
22 context of Part C. Again it goes on to state that Bahel's  
23 position at the UN could also be referenced with his title,  
24 which it describes as closer to that of a foreign diplomat,  
25 political party official or tribal leader, all of which the

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1 court found in that case were covered expressly by the  
2 guideline.

3 The court in Bahel also noted that Section 2C1.1 also  
4 applies to offenses under the Foreign Corrupt Practices Act,  
5 which generally involve the payment to public officials,  
6 candidates or public office or agent or mediator with an  
7 intent to influence an official act or decision of a foreign  
8 government or political party.

9 So based upon my review of 2C1.1, the holding in Bahel  
10 and the application notes and commentary of that section of the  
11 guidelines, both Ashe, as the elected president of the PGA and  
12 ambassador, and Leung as an ambassador, both qualify as public  
13 officials under 2C1.1, in that they are either elected public  
14 officials or public officials in a high level decision-making  
15 or sensitive position within the meaning of the guidelines.

16 Now let's now discuss the role enhancement for Mr. Ng  
17 as an organizer or leader of the criminal activity that  
18 involved five or more participants or was otherwise extensive.

19 Mr. Genser, do you have anything to add with regard to  
20 that?

21 MR. GENSER: No, your Honor. We rely on our papers.

22 THE COURT: Does the government have anything to add?

23 MS. ECHENBERG: No, your Honor.

24 THE COURT: Now, here I find that the evidence was  
25 more than sufficient to establish by a preponderance of the

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1 evidence that defendant Ng was an organizer or leader of  
2 criminal activity that involved five or more participants or  
3 was otherwise extensive.

4 First, as the government and Probation Department  
5 state, there are at least five participants in the criminal  
6 activity here. You have the defendant, you have Ashe, Leung,  
7 Yin and Forest Cao.

8 Now, I know the defense points out that Forest Cao and  
9 Mr. Ng pursued, had different interests at a certain point in  
10 time. However, I believe that the government is correct, based  
11 upon the testimony during the trial, that before Mr. Cao and  
12 Mr. Ng had a falling out, the evidence supports a finding that  
13 Mr. Cao started out working with Mr. Ng. Therefore, Mr. Cao  
14 was clearly a participant within a meaning of the guidelines.

15 In fact, I think, to the extent -- and I believe this  
16 is the case -- he was or could be described as a  
17 co-conspirator, who I would continue to be co-conspirator under  
18 the law because I don't believe there was any evidence he, in  
19 fact, withdrew from in a legal sense. I believe the evidence  
20 supports a finding that there are five or more participants.  
21 However, in addition, I also find that the evidence supports  
22 that Mr. Ng was a leader of criminal activity that was  
23 otherwise extensive within the meaning of the guidelines.

24 The application notes for Section 3B1.2 provide that,  
25 "in assessing whether an organization is otherwise extensive,

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1 all persons involved during the course of the entire offense  
2 are to be considered. Thus, a fraud that involved only three  
3 participants, but used the unknowing services of many  
4 outsiders, could be considered extensive."

5 Now, here the criminal activity involved the unknown  
6 services of numerous outsiders. By "outsiders," I mean -- and  
7 the guidelines are consistent with this -- individuals who are  
8 not participants, in other words, not considered participants  
9 in the criminal activity. So here those included employees of  
10 South South News, people employed by the UN OSSC and the United  
11 Nations itself who provided unknowing assistance to the  
12 criminal activity related to the Macau, the development of the  
13 Macau Conference Center. Therefore, the application of a  
14 four-level enhancement to the defendant's role as an  
15 organizer-leader of criminal activity that involved five or  
16 more participants or was otherwise extensive I find to be  
17 warranted. So in light of these findings, I reject the  
18 guideline calculation contained on Page 39 of the defense  
19 submission.

20 Are there any other objections to the guideline  
21 calculations contained in the presentence report, Mr. Genser?

22 MR. GENSER: No, your Honor.

23 THE COURT: From the government?

24 MS. ECHENBERG: No, your Honor.

25 THE COURT: All right. So the defense objections are

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1 obviously preserved with regard to any appeal in this matter.

2 Now I will down to the business of calculating Mr.  
3 Ng's guideline range using the November 1st, 2016 guideline  
4 manual. I do so in the following manner. The counts of  
5 conviction are grouped together pursuant to 3D1.2 (d) since the  
6 offense level is determined largely on the basis of the total  
7 value of the funds laundering during the offense.

8 Pursuant to 3D1.3 (b), since the counts involved  
9 offenses of the same general type to which different guidelines  
10 apply, the offense guideline that produces the highest offense  
11 level is applied. The guideline for Counts 5 and 6 under  
12 Section 2S1.1 is applied here and since they produce the  
13 highest level. The base offense level is determined with  
14 reference to Section 2S1.1, which applies to a violation of  
15 Title 18, United States Code, Section 1956 (h).

16 The offense level calculated from the underlying  
17 offenses is utilized since the defendant committed the  
18 underlying offenses, and the offense level for these offenses  
19 can be determined, and this is again pursuant to 2S1.1(a)(1),  
20 so the most appropriate guideline for the calculation for the  
21 underlying offenses is 2C1.1.

22 Since Mr. Ng was not a public official pursuant to  
23 2C1.1(a)(2), the base offense level is 12. Since the offense  
24 involved more than one bribe, as I mentioned before and as I  
25 found, a two-level increase is warranted. Since the bribes

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1 totaled more than \$550,000, but not more than \$1.5 million, a  
2 14 level increase is warranted. Since the offense level  
3 involved an elected public official or any public official in a  
4 high level, decision-making or sensitive position, a four level  
5 increase is also warranted. Also since Mr. Ng was convicted  
6 under 18, United States Code, Section 1956, an additional  
7 two-level increase is warranted.

8 Now, finally, because, as I found Mr. Ng was an  
9 organizer, leader of criminal activity that involved five or  
10 more participants or was otherwise extensive, a four level  
11 increase is warranted. The resulting adjusted offense level is  
12 38. Mr. Ng's criminal history category is I, resulting in a  
13 guideline range of 235 to 293 months imprisonment.

14 Now, understanding there have been various objections,  
15 do the parties agree that based upon the findings that I've  
16 made, that Mr. Ng's guideline range is 235 to 293 months in  
17 prison. The government?

18 MS. ECHEBERG: Yes, your Honor.

19 THE COURT: The defense?

20 MR. GENNER: Yes, your Honor.

21 THE COURT: Based upon the parties' agreement, in  
22 other words, of course, with noting the objections that have  
23 already been interposed and my independent evaluation of the  
24 sentencing guidelines, I accept the guideline calculation in  
25 the presentence report. I find that Mr. Ng's offense level is

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1       38, Criminal History Category I, and the recommended sentence;  
2 therefore, is 235 to 293 months imprisonment. The supervised  
3 release range is one to three years on each count, and the fine  
4 range is \$25,000 to \$1 million.

5           Now, with regard to the applicability of any  
6 departures, I note that in the defense submission there is a  
7 request for a departure based at least upon Mr. Ng's age,  
8 infirmities and status as a deportable alien.

9           I am to consider whether his age and status as an  
10 alien warrants a departure. Understand the case law applicable  
11 under the Second Circuit, a departure under these grounds is  
12 not warranted under the facts and circumstances here.

13           In addition, I have also considered whether any other,  
14 there are any other appropriate bases for departure from the  
15 advisory range within the guideline system, and while  
16 recognizing I do have the authority to depart, I do not find  
17 any grounds warranting a departure under the guidelines.

18           However, I find and I recognize that I do have the  
19 authority to consider Mr. Ng's age, infirmities, status as a  
20 deportable alien and any other factors contained in 18 United  
21 States Code Section 3553 (a) as a basis for a variance here.

22           Mr. Genser, in your submission on behalf of Mr. Ng,  
23 you requested a sentence of time-served. The Probation  
24 Department has indicated that a variance is appropriate here.  
25 However, the Probation Department recommends a sentence of 72

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1 months imprisonment. The government also states a variance is  
2 appropriate, in other words, but they recommend the sentence be  
3 something that is greater than 72 months imprisonment.

4 Now, I do agree with the parties and the Probation  
5 Department that a variance appears to be warranted in this  
6 case, not the least of which I think it is fair to say that a  
7 235 month sentence would effectively be the rest of Mr. Ng's  
8 life, being that he is currently 69 years' old.

9 Now, the issue in the end is how much of a variance is  
10 appropriate here. Before I hear the parties, let's talk about  
11 the questions that I raised in my May 9th order. Now, I think  
12 with regard to Item 1, I have the answer from the government  
13 from their perspective concerning the pages of the presentence  
14 report related to the donation issue, for lack of a better  
15 term. Mr. Genser, were there any pages of that report that the  
16 defense feels I should reference, understanding that the  
17 defense may take the argument that I shouldn't consider the  
18 report in any way, shape or form?

19 MR. GENSER: Yes, your Honor. Thank you.

20 That is correct, our position is that the court should  
21 afford that report no weight, in that it is not relevant to the  
22 sentencing here. If your Honor is going to consider it, we  
23 would suggest that your Honor also consider the minority  
24 report, noting that the Senate report that your Honor asked  
25 about was a majority report. It is a partisan report.

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1               There was a minority report in Volume V, at Page 5273.  
2 We'll note that on occasion it refers to Mr. Ng as Mr. Wu,  
3 which is the Mandarin pronunciation, but the minority report  
4 notes at that page that the evidence before the committee is  
5 insufficient to establish the precise source of funds for many  
6 of the 220,000 contributions related to the person who was  
7 accused of making those contributions and that the committee  
8 was also unable to obtain specific evidence on the role that  
9 Mr. Ng may have played in particular contribution decisions.

10              THE COURT: Okay. I'll note for the record that what  
11 I did was I went to the report on the internet, I searched for  
12 S E N G throughout the report, both the majority report and the  
13 minority report, and so I am going to consider both here. I  
14 think for me the critical issue is I guess in part I think  
15 there is sufficient information in there that by a  
16 preponderance of the evidence that I can appropriately consider  
17 that.

18              It is not so much the precise nature of the funds,  
19 whether it was 200,000 or a hundred thousand, you know, or the  
20 like. The fact that at the time that this all occurred, it  
21 garnered substantial amount of press coverage and substantial  
22 amount of activity by officials of this country, and while the  
23 facts may be, the facts may be what they are, the issue in part  
24 I'm considering is the impact the knowledge of that would have  
25 on the defendant and his activities as it relates to the future

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1 and specifically with regard to any issues relating to  
2 deterrence, specific deterrence is here.

3 So I understand the arguments being made. Let me ask  
4 you, with regard to Item 2, the government directly in their  
5 opposition memorandum in connection with the pretrial motions  
6 in limine, I have reviewed that already. The question I had,  
7 was there any other information related to the representative  
8 that the government would point me to?

9 I think based upon the email I received, I think the  
10 answer to that is no, but let me hear from the government with  
11 regard to that.

12 MS. ECHENBERG: That's right, your Honor, there is not  
13 another specific document. To the extent we end up arguing  
14 more about the facts, we may want to respond with additional  
15 information, but there is nothing we would point the court to  
16 at this time.

17 THE COURT: Mr. Genser.

18 MR. GENSER: Yes, your Honor. We have one document  
19 that we would like to submit if the court is going to consider  
20 that uncharged conduct or that set of conduct. It is something  
21 that was produced to us in discovery by the government. It has  
22 a Bates stamp on it 000302503. It is not redacted right now,  
23 and I know we haven't been identifying some of the participants  
24 in this set of conduct, so perhaps after this hearing we can  
25 deal with whether it gets filed in a redacted form.

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1           It is some emails that we think made clear that the  
2 defendant was a benefactor to the family of the representative  
3 who were in dire financial straits following the  
4 representative's conviction and that he was basically helping  
5 them financially so they could stay in their home. That is  
6 reflected in this set of emails.

7           THE COURT: All right. If there is a request to  
8 redact the specific names that are mentioned in there -- why  
9 don't you hand it up. Had you provided a copy of that to the  
10 government?

11           MR. GENSER: Yes.

12           MS. ECHENBERG: Yes.

13           THE COURT: I ask the parties to meet-and-confer with  
14 regard to that. With regard to this issue, it is a work in  
15 progress. I haven't made an ultimate decision. I am likely to  
16 reference it, the issues.

17           I think in looking at this, it does appear that  
18 certain of the names, I would agree, probably should be  
19 redacted. I will leave it to the parties to meet-and-confer  
20 about that and present me with a redacted form, and then I'll  
21 rule on whether or not I believe the redactions are appropriate  
22 because I do believe it should be made part of the record.

23           Now, with regard to Item 3, I will ask the parties in  
24 your comments to me to address those. Similarly, I ask with  
25 regard to Item 4 for you to do the same.

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With regard to Item 10, I don't know whether there was evidence -- excuse me -- Item 5 -- I don't know whether there was evidence in the record concerning the reference in Paragraph 58 of the presentence report concerning the travel expenses or not, but let me first hear from the government whether or not there was evidence in the record as to who or what entity paid for those travel expenses.

MS. ECHENBERG: It is our understanding that the trip that Ambassador Ashe took was the trip he took to Macau, was tacked onto a trip that was already planned to a different location, to India, and that either the United Nations or the Indian government was paying for that trip and he just rerouted his return through Hong Kong.

Once he got to Hong Kong with his delegation, we understand Mr. Ng paid for a ferry to Macau and for the accommodations in Macau. I believe that was reflected in Mr. Leung's testimony, possibly in Frances Fuller's testimony to some extent, and certainly reflected in the 3500 material as well.

THE COURT: Mr. Genser, is that something you take issue with, what the government has just said?

MR. GENSER: Not as far as it goes. Obviously to legal conclusions and inferences to be drawn, we preserve all of our objections.

THE COURT: Of course. Okay.

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1           With regard to Item 6 in my order, I asked the parties  
2 to address that in their comments to me. I believe that Item 7  
3 has been addressed by the government, providing me Government  
4 Exhibit 968. Does the defense agree that was the brochure or  
5 something? I may be inaccurately describing it, but it is  
6 Government Exhibit 968?

7           MR. GENNER: We don't have an issue with that, your  
8 Honor.

9           THE COURT: Now, with regard to Item 8, I believe that  
10 the proposed consent preliminary order of forfeiture money  
11 judgment resolves that, those questions that I had there. Do  
12 the parties agree with regard to that?

13           MS. ECHENBERG: Yes, your Honor.

14           MR. GENNER: Yes, your Honor.

15           THE COURT: Okay. Now I'll hear from the parties.

16           Does the government wish to be heard to sentencing?

17           MS. ECHENBERG: We do, your Honor.

18           THE COURT: All right. Go ahead.

19           MS. ECHENBERG: After presiding over this month-long  
20 trial, your Honor, and as you demonstrated during the  
21 proceedings thus far, your Honor is extremely familiar with the  
22 facts of this case.

23           This defendant is an exceptionally wealthy and  
24 powerful man, and he committed an extensive and a serious  
25 crime. For many years the defendant made hundreds of thousands

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1 of dollars of payments, and your Honor has already ruled that  
2 that number is well above \$550,000. He made those payments to  
3 two United Nations ambassadors. He made those payments in ways  
4 that were hard to trace, and he made those payments in an  
5 effort to obtain the United Nations approval for a permanent  
6 United Nations center in Macau that would be the anchor for the  
7 defendant's own massive real estate development project.

8 What the defendant did, he essentially bought the  
9 ability to act as a member state within the United Nations,  
10 something that is not available on the open market and it is  
11 precisely the type of unfair advantage that the bribery and the  
12 FCPA statutes are designed to prevent.

13 It is also the type of inequality that is in conflict  
14 with the basic principles of the United Nations. The defendant  
15 engaged in conduct that not only gave him a significant unfair  
16 advantage, it caused serious reputational harm and serious  
17 financial harm to the United Nations, and that is not in  
18 dispute.

19 Your Honor has already ruled in a prior sentencing in  
20 this case that those consequences came to the United Nations,  
21 and the defense has acknowledged in connection with the  
22 restitution order, there were hundreds of thousands of dollars  
23 at least of damage to the United States nations. It is the  
24 government's position that there should be a significant  
25 incarceratory sentence, as least as high as the probation

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1 officer has argued, 17 months.

2 THE COURT: 72?

3 MS. ECHENBERG: 72 months.

4 MR. GENNER: We'll take the 17.

5 THE COURT: I figured, yes.

6 MS. ECHENBERG: My words cut off, your Honor, but 72  
7 months is absolutely what I was referring to.

8 I want to address, and I don't know if I will have the  
9 opportunity to respond when the defense finishes, so I'll  
10 address now a few of the arguments, I expect, unless your Honor  
11 is going to give us the opportunity?

12 THE COURT: No. I think I would allow within reason  
13 the ability for the parties to respond to each other's  
14 arguments. It is up to you, Ms. Echenberg. You can address  
15 them, and if there are issues, points you want to make later  
16 on, you can do that.

17 MS. ECHENBERG: I'll address them briefly.

18 First, this is not an aberration for this defendant.  
19 I think your Honor honed in on exactly what is important about  
20 the conduct that was addressed in the 1990's in the Senate  
21 report. The defendant was approached by investigators. The  
22 conduct was widely reported. The defendant was on notice since  
23 the 1990's that engaging in financial transactions,  
24 particularly transactions that go through other people and that  
25 are shaded in different ways, is conduct that is criminal in

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1 the United States, it is conduct that is closely watched in the  
2 United States. The defendant was on notice about that behavior  
3 decades ago.

4 With regard to the conduct that involves the  
5 representative, first I would note the email that has been  
6 passed up deals with a time period when that individual was no  
7 longer in public office, so we don't think that email is  
8 particularly relevant, but that conduct occurred after the  
9 conduct in the 1990's and the conduct occurred in a secretive  
10 manner. In the 3500 material -- and there would have been  
11 testimony had this been admitted at trial -- the defendant at  
12 least in one instance directed his assistant to provide money  
13 to the representative in a bag under a table in ways that  
14 demonstrate that the defendant understood that this was  
15 improper conduct.

16 THE COURT: Just so that I understand --

17 MS. ECHENBERG: Yes.

18 THE COURT: -- your proffer of that evidence, was that  
19 prior to -- that was while the representative was still a  
20 representative. Is that correct?

21 MS. ECHENBERG: That's correct, your Honor. The  
22 payments were designed to have access to other public  
23 officials.

24 THE COURT: Okay.

25 MS. ECHENBERG: So this conduct is not an aberration,

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1 and for that reason it should be significantly punished. The  
2 defense spends a significant part of their submission focusing  
3 on the defendant's philanthropic efforts.

4 First, as we noted in our submission, while it is an  
5 impressive amount of money, no doubt, the defendant himself has  
6 acknowledged that he is a billionaire, he is worth \$1.8  
7 billion, so the amount that he gave to philanthropic causes is  
8 not extraordinary in the way that the guidelines references  
9 should be a reason for a significant reduction in sentence, the  
10 kind that the defense is asking for.

11 In any event, the government is not arguing for a  
12 guideline sentence here, nor is Probation. The government and  
13 Probation are taking account of those philanthropic efforts and  
14 the defendant's health conditions, which is another issue that  
15 the defense addresses. Those health conditions are not  
16 extraordinary, either. They are health conditions that the  
17 Bureau of Prisons twice, in letters that we have submitted to  
18 your Honor, says that they can accommodate and they accommodate  
19 for many other prisoners.

20 The defense also addresses business and family  
21 consequences, and while those consequences may be unfortunate  
22 for the defendant and his family, those are risks and the  
23 expected consequence of engaging in white-collar crime such as  
24 this. Again, I would come back to the fact that the defendant  
25 himself says he is worth \$1.8 billion. So this is not a

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1 situation where anyone is going to be in poverty or in any sort  
2 of dire straits.

3 None of those reasons gives the court a reason to do  
4 anything but give the defendant a significant incarceratory  
5 sentence here. I would note one other thing. It is not  
6 something the defense has argued yet, but I expect they may  
7 argue. The defendant's home detention during these proceedings  
8 should not be a factor in your Honor's consideration of the  
9 sentence. The home detention did what it was designed to do.  
10 It kept the defendant returning to court for these proceedings  
11 leading up to sentencing just like any other defendant who is  
12 on bail.

13 I would refer the court to the PSR that describes the  
14 defendant's home detention. He lives in a 24-hour concierge  
15 building. He lives in an apartment that is, in fact, two  
16 apartments, combining a very large apartment, four bedrooms,  
17 three and a half bathrooms, a large living room, a large  
18 kitchen, which is well furnished and well maintained. That is  
19 Probation's description.

20 He has a cook, a masseuse that constantly come by that  
21 visit him from all over the world, and that increases with  
22 frequency for holidays and special occasions and he is frankly  
23 living a lavish lifestyle. He himself told the Probation  
24 Department that his monthly expenses are over \$20,000 a month.  
25 So there is nothing about what the defendant has experienced

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1 thus far that is punishing or is anything like an incarceratory  
2 sentence.

3 We have submitted the orders for forfeiture and  
4 restitution, and I would also just reiterate our argument in  
5 the sentencing submission for a significant fine of \$2 million.

6 THE COURT: All right. Mr. Genser, do you wish to be  
7 heard.

8 MR. GENSER: Yes, your Honor.

9 THE COURT: Okay.

10 MR. GENSER: I have comments that will address the  
11 3553 sentencing factors, but before I address that, your Honor,  
12 I wanted to briefly respond on the sort of I guess we call it  
13 the three uncharged conduct areas without using the names of  
14 the other folks that are involved.

15 So our argument, your Honor, is that those should be  
16 afforded no weight. They're not relevant to sentencing.  
17 They're certainly not aggravating factors, not just because it  
18 is hearsay and hasn't been presented in any kind of  
19 comprehensive way, but because there is no allegation and  
20 certainly no proof that any of that relates to bribery.

21 With respect to the Senate report, what I wanted to  
22 say about that, your Honor, is the business associate involved  
23 in that case was a business associate of Mr. Ng's. They were  
24 looking to set up a business. Mr. Ng was looking to set up  
25 business relationships in the U.S. and between the U.S. and

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1 China, and he was in business with that person, and that is why  
2 there were funds wired into accounts of trading companies.

3 That individual invited Mr. Ng to come to political events, and  
4 Mr. Ng took advantage of those invitations.

5 There is nothing, certainly nothing except a few  
6 instances of what I would qualify as double hearsay to suggest  
7 that Mr. Ng had any knowledge of any campaign finance  
8 violations, and what I'll note is that the individual involved  
9 pleaded guilty, and it is our understanding he was actually a  
10 cooperating witness and received a 5K letter from the  
11 government.

12 I know this just from Google searching, and I have an  
13 article from a CNN news article, November 1st, 1999 I can hand  
14 up to your Honor that reports that.

15 THE COURT: That is okay. I am familiar with it,  
16 which will be no surprise to my law clerk, I had Googled that  
17 to determine what sentence that individual had received and  
18 became aware of it at least in the media he was reported as  
19 being a cooperator. Let me ask this, though.

20 I understand the hearsay argument, but I can rely on  
21 hearsay?

22 THE INTERPRETER: The interpreter cannot hear your  
23 microphone.

24 THE COURT: Okay. Sorry.

25 Let me just start again. With regard to hearsay, I

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Sentence

1 can rely on hearsay and, in fact, I dare say many of the --  
2 well, I think all of the -- well, many of the exhibits to the  
3 defense submission are, in fact, hearsay, some double hearsay.  
4 So just to get the legal point out of the way, I can rely on  
5 hearsay evidence in connection with sentencing.

6 Do you agree with that?

7 MR. GENSER: I do, your Honor. I am talking the  
8 weight should the court ascribe to it. As additional  
9 background, there was no allegation of any bribery at all in  
10 any aspect of that Senate report. It was a campaign violation  
11 issue with respect to the business associate.

12 I'll also note, your Honor, that Mr. Ng was never  
13 charged with anything related to that. I know that there was  
14 something in the PSR that suggested that witnesses had fled,  
15 and Mr. Ng didn't give an interview when he was approached in  
16 China relating to that, but I will proffer to the court that  
17 Mr. Ng recalls actually meeting with investigators in I believe  
18 1997 in his attorney's office in China, Mr. Valente, and  
19 answering questions about it, and to his understanding, it was  
20 cleared up.

21 So our position is if this has any relevance, its  
22 relevance to knowledge that there are campaign finance laws  
23 that prohibit foreign donations, it doesn't speak to what the  
24 allegation in this case is, which is bribery. Our position is  
25 Mr. Ng wasn't involved, didn't have any knowledge of campaign

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1 violations in that case, and it shouldn't be given any weight  
2 with respect to this sentencing.

3 With respect to the representative, I think we have  
4 made our point there. There is again no allegation of bribery.  
5 There is an allegation of some gifts and support to the  
6 representative, as the government just said, for access, to  
7 meet other people. The fact is that Mr. Ng became a benefactor  
8 to the representative's family. That representative was  
9 convicted, he was in terrible financial situation, and he  
10 essentially implored Mr. Ng to help him support his family  
11 after-the-fact, and Mr. Ng did. He took the representative's  
12 children as his own godchildren, and that is reflected in the  
13 letter.

14 So the government says that's somehow an aggravating  
15 factor, the court can further look at it as further evidence of  
16 Mr. Ng's general approach being charitable and trying to help  
17 out friends in need.

18 With respect to the UN official and the \$25,000, that  
19 was a loan. The person requested a loan to help out with  
20 graduate school. Mr. Ng agreed to give the loan. The 3500  
21 material reflects that. There was expectation it would be  
22 repaid within four or five years, and there is really nothing  
23 more to that. I don't think any of that should be given any  
24 weight or factor in. None of it speaks to a pattern or a  
25 history of attempting to bribe. It is quite the opposite. If

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1 anything, it is a pattern or history of thinking that certainly  
2 it is okay to have relationships with people, certainly okay to  
3 help people financially and try and network and establish  
4 himself and get contacts through those relationships.

5 So with that, I would like to now address the  
6 sentencing factors and I have comments that may take a little  
7 while. So we thank the court in advance for your patience.

8 THE COURT: Why don't we take a brief break since in  
9 your comments you have indicated will take a little bit of  
10 time, and the government I may have response to that. Let's  
11 take a break now and come back in about five minutes. It is  
12 about noon, so we'll come back somewhere between 12:05 and  
13 12:10. Say 12:10 because there are a lot of folks here.

14 (Recess)

15 THE COURT: You may be seated. Mr. Genser, you may  
16 proceed.

17 MR. GENSER: Thank you, your Honor.

18 Your Honor, Mr. Ng is 69-year-old man with some  
19 significant health issues. He has a history of strokes,  
20 coronary artery disease, diabetes, high blood pressure,  
21 hypertension, gall bladder issues. In 10 years, he will be 80  
22 years' old, just about 80 years' old, and he looks all right  
23 today, but we don't know what kind of shape he will be in in 10  
24 years, and I think it is fair to say that these next 10 years  
25 will be perhaps the only 10 good years that he has left.

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1           The government is asking the court to sentence him to  
2 in excess of six years in jail, an amount that could well turn  
3 out to be a life sentence for him depending on what that is.  
4 His native language is Cantonese. He doesn't speak any  
5 English. He can't stomach western food. When he was  
6 incarcerated at the beginning of this case for 30 days in a  
7 maximum security facility or equivalent, he lost 15 pounds.

8           Jail is going to be very, very hard on him if your  
9 Honor sentences him to jail because of his age, his health  
10 issues, his language, he will be isolated and vulnerable in a  
11 way that most defendants are not.

12          He has, as I mentioned, already spent 30 days in jail  
13 and he spent the last two and a half years locked in an  
14 apartment. It's a perfectly fine apartment, but he has been  
15 locked in a apartment. He has not had his freedom for the past  
16 two and a half years. He indicated a waiver of deportation,  
17 meaning upon release from jail, as soon as the ICE agency gets  
18 around to it, he will immediately go into their custody. As  
19 soon as they get around to it, he will be deported to China.  
20 He will be barred from reentry for 10 years. He will never  
21 come back to the United States, your Honor.

22          We ask the court to impose a sentence of time-served,  
23 let him go back him to his friends and family, many of whom  
24 have flown here from China and are in the courtroom here today  
25 to be with him and show their support for him and for the

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1 court.

2 As the court knows, Section 3553 sets forth various  
3 factors that the court shall consider in determining a  
4 particular sentence, and the overall goal is to impose a  
5 sentence that is sufficient but not greater than necessary to  
6 comply with the purposes in Paragraph 2 of that section. What  
7 I would like to do is just highlight some of the factors. I  
8 won't address all of them. We addressed them in our papers,  
9 and I know your Honor has read them carefully.

10 First I would like to talk about the factors in  
11 Subsection (A)(1), that direct the court to consider the nature  
12 and circumstance of the offense and the history and  
13 characteristics of the defendant.

14 I am going to talk about the second part of that and  
15 come back to the first part of that later. I'll talk about his  
16 history because his personal background and his history has  
17 shaped him into the person he is today.

18 Notwithstanding the conduct in this case for which the  
19 jury convicted him, the person that he is is a person who has  
20 demonstrated extraordinary kindness and compassion to everyone  
21 around him at every stage in his life. That is informed by the  
22 history and that is what shaped him.

23 Mr. Ng has led a remarkable life. He is probably one  
24 of the most remarkable people I've ever met and perhaps that  
25 many of us in this room has ever met or will ever meet. He

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1 came from literally nothing. He has lived through unimaginable  
2 poverty. He has lived through hardship and tragedy, and he has  
3 persevered to become an extraordinarily successful businessman  
4 almost through sheer force of his will.

5 His life story is just simply amazing. He grew up in  
6 extreme poverty in a turbulent, violent time in the aftermath  
7 of the Communist revolution in China. His family was run out  
8 of his village and exiled by the Communist Party. They  
9 wandered while he was a young boy from village to village,  
10 essentially close to starvation, scrounging for food.

11 His mother was so desperate that when he was a young  
12 boy, she tried to drown herself and the surviving children that  
13 she had because several of his siblings he never met, they  
14 perished before he was born, she tried to commit suicide by  
15 drowning them all in a pond, but they were saved by villagers.  
16 He survived. He persevered. He quit school after elementary  
17 school to go to work to help his family.

18 He did various odd jobs. He wound up working  
19 construction, building what we could call them houses but  
20 they're more like brick shacks by hand. He made the equivalent  
21 of \$3.50 a week, most of which he gave to his mother to help  
22 support the family. He was so poor when he got married, he was  
23 wearing borrowed clothes. He didn't have a pair of shoes. He  
24 built his own house out of abandon bricks. The house didn't  
25 have door or window, didn't have running water, didn't have

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1       electricity.

2                  In 1978, but he was determined to improve his  
3 situation. In 1978, he moved to Macau with the equivalent of  
4 \$13.00 in his pocket, and he would turn that \$13.00 into a  
5 billion dollar real estate business. He started out by selling  
6 excess inventory on the streets of Macau, inventory of clothes  
7 and fabrics. He was just one of thousands of migrants trying  
8 to scrape a living together.

9                  He rented a factory. He lived and slept there with  
10 his wife and his children. He hired people from his village  
11 who had also emigrated to Macau to help sell clothes on the  
12 street. His strength and his enterprising spirit allowed him  
13 to become a successful entrepreneur. He became a successful  
14 fabric seller in Macau, did well for a while, but that business  
15 went under in the wake of Tiananmen Square protest and impact  
16 that had on economy. That also depressed real estate values in  
17 Macau, he had the foresight and gusto to invest in real estate  
18 when values were very depressed, and he did that and that paid  
19 off.

20                  In 1993, based on some reforms, real estate values  
21 soared and he became wealthy for the first time, really  
22 wealthy. That success was short-lived. As the court knows  
23 from our submissions, in 1998 his second son, his beloved  
24 second son, Bin Yan, who was 19 years' old and studying in  
25 Canada, was killed in a tragic car accident. That was

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1 devastating to Mr. Ng and his family, obviously.

2 In the years after his son's death, Mr. Ng suffered  
3 two strokes, was hospitalized. His business suffered as well  
4 and there was the SARS epidemic in 2003, which again depressed  
5 the real estate market, and Mr. Ng's real estate business which  
6 was overextended collapsed. He essentially lost everything,  
7 was heavily in debt, chased by creditors, but he survived,  
8 persevered again, never gave up.

9 He consoled his wife, supported his family, he worked  
10 hard to keep current on his loan payments, and he doubled-down  
11 on real estate, taking another chance that it would come back,  
12 and it paid off again and he became wealthy again.

13 I dwell on this because it has shaped him. These  
14 experiences have shaped him. They made him who he is. He was  
15 born a peasant. He is a peasant in his heart. He is intimately  
16 familiar with poverty, with pain and suffering, and he has  
17 never forgotten where he came from, and that's why, as you see  
18 in the letters of support and the people who are here who have  
19 written to the court, he has lived a life of such extraordinary  
20 compassion and generosity, and that goes to his good character,  
21 which is obviously a factor that is highly relevant under the  
22 3553 analysis under Subsection (a)(1).

23 I can talk about the tens of millions of dollars he  
24 has given to charities, to build roads, hospitals, schools to  
25 support youth in Macau. His assistance to the elderly in the

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1 Village that he came from, that is laid out in our papers and  
2 it speaks to his generous spirit.

3 We're not talking just about the amount; we are  
4 talking about the quality of his charity, and that is what I  
5 think is more revealing than the amount of money he has given.  
6 What I would like to focus on is the way in which Mr. Ng has  
7 given of himself, the way he has cared for and treated his  
8 family and his employees, his fellow villagers and his  
9 countrymen over the years whether he was poor or rich. That's  
10 why we're asking for a variance, and there are lots of cases  
11 that we cite in our papers that support a variance for all of  
12 those grounds.

13 I want to touch on a few. There are a lots of  
14 examples, countless examples of his generosity and compassion  
15 and good character in our papers. Just a few examples.  
16 Exhibit 45 to our submission is a letter from Mr. Ng's cousin,  
17 Wu Yan, I hope I am pronouncing that correctly, he was Mr. Ng's  
18 younger cousin, and he describes an incident when they were  
19 working in construction when Mr. Ng, before he became  
20 successful in Macau, Mr. Ng came across an old man in a nearby  
21 village basically senile, living in the street all alone, the  
22 kind of person who everyday scores of other people would just  
23 walk by, but Mr. Ng didn't. He took pity on him and he took  
24 him to get some clothes, took him to get some food. He found  
25 him a place to live. He followed up with him. He tried to get

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1 him into a nursing home. He just did that out of the kindness  
2 of his heart before he was a wealthy man.

3 Wu Yan describes how in the 1970's in their village  
4 Mr. Ng did a number of things on his own, had an enterprising  
5 spirit to try to improve things for the villagers. He had the  
6 idea to go and get young saplings and transplant them into the  
7 village so there would be trees growing there, and he organized  
8 the villagers to do that. He organized them to rebuild a  
9 bridge that was falling apart and was unsafe for children and  
10 older people to cross the river. He organized the villagers to  
11 dig fresh water wells, and they worked together digging the  
12 wells with their bare hands.

13 He tells how when he was working in the factory,  
14 living in the factory in Macau selling clothes, Mr. Ng would  
15 let Mr. Yo Yan sleep on the only comfortable table in the  
16 factory while Mr. Ng himself slept on the floor because he was  
17 his younger cousin and how when he was sick, Mr. Ng would brew  
18 Chinese herbal medicine for him and stay with him and care for  
19 him. That is his nature. That is who he is. These are a few  
20 of examples of scores of examples in the letters.

21 There are so many stories of Mr. Ng not only giving  
22 financial help to his employees and villagers when they were  
23 sick and faced debilitating medical bills, but it is not just  
24 the financial help, but it is his readiness to help even the  
25 lowliest employee and the way he would get personally involved

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1 to help arrange for medical care. It wasn't somebody who was  
2 just writing a check.

3 Exhibit 2, your Honor, in our submission is a letter  
4 from Chin Chin Yo, a fellow from Mr. Ng's home village of Ju  
5 Jang in China, and he described in how 2007 Mr. Ng learned how  
6 he suffered a stroke and helped him find treatment in various  
7 hospitals, followed up and got physical therapy so he could  
8 recover. He helped him make appointments and, yes, he paid for  
9 his medical care, gave him thousands of dollars to help him pay  
10 for his medical care. He also came to visit for him and check  
11 up on him and he encouraged him to carry on.

12 Exhibit 12 is another example of that from Young Hu,  
13 another fellow villager. He helped her and followed up with  
14 her when her husband was sick with cancer. In 2007 when she  
15 fell ill, he followed up again. Just a few examples, your  
16 Honor.

17 He has been good to his employees. He is a kind and  
18 compassionate boss. He cares about his employees, and that  
19 comes through. Exhibit 15, your Honor, Liang Segwan wrote a  
20 letter in support. She worked in Mr. Ng's company doing HR for  
21 23 years. When she was 37 years' old, she became pregnant and  
22 she had a high-risk pregnancy. Mr. Ng approved her to have  
23 extra leave. He gave her extra months' pay that wasn't  
24 required by law. He followed up with her to make sure she was  
25 getting enough nutrition for herself and the baby, and not only

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1       that, he held her job open for a year until she was ready to  
2       come back and when she was healthy and ready to come back to  
3       work.

4                  More recently with South South News, after Mr. Ng was  
5       incarcerated in this case, he continued to fund the operations  
6       of South South News so that the employees weren't abruptly cut  
7       off and finding themselves suddenly unemployed.

8                  There is another story, example from the letters I  
9       think is worth dwelling on for a moment. Exhibit 35 from the  
10      gentleman named Wu San Hu who worked with Mr. Ng's masseuse in  
11      China. He tells a story, an incident of whether Mr. Ng was in  
12      a restaurant and private room in a meeting and Mr. Wu San who  
13      fell ill, who fainted and he went down on the floor and called  
14      out for help. The waiter came over, immediately ran into the  
15      private room to get Mr. Ng.

16                  Mr. Ng was in the middle of a business meeting comes  
17      running out, goes right to him, gives him his medicine, Chinese  
18      herbal medicine that he keeps for his own heart issues,  
19      administers those, rubbing his forehead, directing people to  
20      call for an ambulance, staying with him and caring for him. Of  
21      course, he offered to pay for his medical costs. He recovered,  
22      thankfully.

23                  But this one is interesting in particular because it  
24      is very similar to what the court learned about last year at  
25      the post-conviction bail hearing when the court learned Mr. Ng

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1 came to the aid of John Prindle, one of the guards from  
2 Guidepost who was guarding Mr. Ng when he was in the gym in his  
3 building and Mr. Prindle suffered a heart attack. Mr. Ng  
4 immediately came to his aid, and he did the same thing, he  
5 stayed with him, he tried to let the guards know that he had  
6 medicine in his apartment that could help. He tried to help  
7 with CPR. This wasn't even a thought of trying to take  
8 advantage of the situation to escape. This was his instinct  
9 because that is who he is.

10 It is not something that he did for show or for  
11 recognition or for some advantage. He did it because that was  
12 the right thing to do and he cares about the people around him.  
13 He never even mentioned that incident to his lawyers. We  
14 learned about it, as your Honor knows, from the Guidepost cards  
15 long after the fact.

16 That just speaks to his character. Whatever led to  
17 the conviction, he is a good and caring man. He also has a  
18 quality of forgiveness when he is wronged, and I think I'll  
19 dwell on that briefly. Exhibit 8, shows his big heartedness  
20 and his readiness to forgive and forget. There is a letter  
21 from a gentleman named Quan Mu Sen, who describes an incident  
22 when Mr. Ng was defrauded in a business deal out of two million  
23 I guess Chinese dollars, Chinese currency, and the perpetrator  
24 was arrested and the money was repaid. Mr. Ng, out of pity,  
25 even though he was the victim of the fraud, wrote a letter

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seeking leniency to the court just out of pity for the man.

Exhibit 43 is a letter from Wu Quan Non, nephew of Mr. Ng. He tells of a story that is also revealing of his character and his spirit when Mr. Ng was back in the Village and he was giving always to help elderly in the Village. He came upon a man 80 years' old, and the man started crying and asked him why, and he said well, I am the one of the people who denounced your family as landlords when you were a little boy, and now you're giving me money to help support me in my old age, I feel so guilty about this. Mr. Ng's response was don't worry about it, brother, it is all past. That speaks to the quality of the person he is, your Honor.

With respect to his giving and comparable giving, the government suggested that in light of his net assets, it shouldn't count, but I think it should count, your Honor. I don't think we measure charity based on your illiquid assets and real estate investments that may or may not be realized over time. We measure it by the quality of the giving. I think that is what we are talking about here.

One example, Exhibit 18, was a letter from a gentleman named Sang Hung Mu of the Maging Foundation, and he tells about in 2005 Mr. Ng heard about Maging Foundation, and he didn't just write a check to go support the foundation, it supports education and development of underprivileged children in rural parts of China, the particular Uyghur Tribe, which is not a

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1 particularly popular group of people in China.

2 Mr. Ng and his wife traveled to this remote area to  
3 see the conditions that the children lived in, to visit them,  
4 to pay home visits, and Mr. Ng began by sponsoring five ethnic  
5 Uyghur girls, maybe it is Uyghur, I may be mispronouncing it,  
6 and he met those girls, he stayed in touch with them over the  
7 years. He expanded to his foundation to include thousands and  
8 thousands, support for thousands and thousands of  
9 underprivileged children in rural China.

10 In 2014, he traveled to a ceremony when those five  
11 girls that he essentially adopted as his godchildren graduated  
12 junior high school to be with them, and there is a photograph  
13 of that ceremony in Exhibit 54 of our submission. You can see  
14 in the photograph the bond that he has with them and the  
15 emotion that is between them at that ceremony. That is what  
16 goes to his spirit and his kindness, your Honor.

17 He is also an extraordinarily dedicated family man,  
18 and I take issue with the government's argument that there is  
19 nothing extraordinary or warranting a variance based on his  
20 dedication to his family. There are lots of cases that we  
21 cited that show that that is warranted.

22 This is obviously a characteristic that is relevant in  
23 the 3553 analysis. Your Honor has received letters from  
24 Mr. Ng's wife of 40 years, his son Alex, his daughter Janet,  
25 his daughter-in-law. They're all here in the courtroom today,

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1 your Honor. You have received letters from his older brothers  
2 and sister, and what comes through from these letters is the  
3 love, the reverence, the feeling of closeness that Mr. Ng's  
4 family has, the way that he is involved as a compassionate  
5 father. He is still close with his older siblings. He pays  
6 for all their medical care.

7 He is the patriarch of a large extended family and he  
8 doesn't just provide financial support, he provides guidance,  
9 he provides encouragement and emotional support for scores of  
10 family members. I just want to talk about a few examples, your  
11 Honor. There is a lot of discussion of that in the papers.

12 I want to highlight two things. A letter from  
13 Mr. Ng's goddaughter, Doris, who is here in the court today.  
14 Her mother was a nanny for Mr. Ng's children for many years,  
15 and Mr. Ng adopted her as a goddaughter. She described how  
16 when she was younger, she had some health problems and she was  
17 essentially ostracized in school. She was very depressed as a  
18 younger child and she was doing poorly in school.

19 Mr. Ng spent time with her and he has talked to her  
20 and he encouraged her and he taught her how to persevere and  
21 overcome challenges, and she describes in her letter how she  
22 went on to graduate actually in the top of her class in her  
23 high school class of 200 students and get a scholarship to the  
24 University of Macau, and she credits Mr. Ng.

25 Exhibit 30 is a letter from Crystal's son, Mr. Ng's

I5BJNG1

Sentence

1 daughter-in-law, and she tells an extraordinary story. When  
2 she first got married to Alex, Mr. Ng's son, and moved to  
3 Macau, she was out of place and she wasn't happy living in  
4 Macau. Mr. Ng traveled 5,000 miles to the other side of China  
5 to speak with her parents about the situation, and he convinced  
6 her parents to actually uproot themselves and come to Macau to  
7 be with her so that the family would be happy and she would be  
8 happy, and they did that, they came.

9           It was okay. She still wasn't making an adjustment  
10 well, so Mr. Ng flew all the way back to her village, 5,000  
11 miles, and spoke to aunts and uncles and cousins and friends,  
12 and he convinced them all to come to Macau and he made  
13 arrangements for housing. He helped them with jobs, helped  
14 them with school so that his family and his extended family  
15 would have a happy life. That is dedication to a family. That  
16 is a family man, your Honor.

17           I have to say I've seen this myself. I have been to  
18 the apartment many times over the past year. We had lunch  
19 there many times. Mr. Ng greets you with a smile no matter how  
20 dire the situation or how bad the news. He is always humble.  
21 He serves the food himself. He goes around, and his biggest  
22 concern is to make sure everyone has enough on their plate, and  
23 when his grandchildren are allowed to come visit, he is so  
24 happy to see them. You can see it on his face. He is really  
25 involved with his family. They're very close.

I5BJNG1

Sentence

1           Another sentencing factor that I think your Honor can  
2 consider is the impact of a jail sentence on Mr. Ng's  
3 employees. Because Mr. Ng is not only the beloved patriarch of  
4 a large extended family, but he is essential to the continued  
5 success of a business that employs several hundred people in  
6 China. They need his involvement and his support. It is  
7 difficult to quantify it, but imprisonment would result in  
8 significant collateral damage to numerous innocent employees.

9           Over the past couple of years while he has been on  
10 home detention, she has been constantly on the phone trying to  
11 kind of stabilize things in the business in the wake of this  
12 case and the charges. The letters that have been submitted to  
13 the court talk about the enormous debt and enormous pressure  
14 the business is under. The letters make clear Mr. Ng's  
15 children are working to try to help run the business, but they  
16 need his help to manage things.

17           If he is incarcerated, he won't be able to be on the  
18 phone as he has been, and it is reasonable to expect that the  
19 business is going to suffer and may not survive. Certainly  
20 many of his projects employing hundreds of people in China may  
21 not be able to go forward. We have cited a number of cases  
22 that recognize that that is a valid consideration and a grounds  
23 for a variance.

24           So I would now like to turn to the first part of 3553  
25 (a)(1), the nature and circumstances of the offense. I am not

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Sentence

1 going to relitigate the facts. Your Honor has presided over  
2 the trial and made rulings related to factual issues, but I  
3 have one observation that I think is important to highlight and  
4 I think that it is important.

5 There is absolutely no dispute in the case that the  
6 evidence shows that certainly at least part of Mr. Ng's  
7 motivation, and we would argue the majority of his motivation,  
8 if not all of it, was to do something really good in this case,  
9 that he genuinely believed in the Macau Conference Center  
10 project, it would be a great thing for Macau, China and South  
11 South Nations.

12 I would draw the court's attention to the fact on Page  
13 18 of the government's submission, the government agrees that  
14 to be sure, there is evidence, "there is evidence indicating  
15 that, as the defense states, he may also have had patriotic  
16 and/or philanthropic motivations for pursuing the project."

17 Of course, the government also argues that Mr. Ng had  
18 a profit motive and it wasn't all pretty and they've made that  
19 argument. We responded to it in our papers. I won't belabor  
20 that point, but I think we should pause for a moment and  
21 recognize that even that concession is remarkable coming from  
22 the government in a criminal case.

23 I am not familiar with another criminal case where at  
24 least part of the motive was patriotic and philanthropic, to do  
25 something potentially wonderful on a grand scale that could

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Sentence

1 potentially help millions of people in the developed world, and  
2 that is relevant and there is lots of evidence in the case of  
3 Mr. Ng speaking about it, speaking about his vision, sharing  
4 his vision and trying to present his vision on the merits to  
5 different constituents.

6 Another factor that I want to address is obviously a  
7 set of factors in Paragraph (a)(2) of 3553, and that is the  
8 seriousness of the offense, promotion of respect for the law  
9 and just punishment. These are very weighty and important  
10 factors and we do not trivialize them. The government won its  
11 conviction here, and this is going to the need for the sentence  
12 to reflect promotion of respect for the law.

13 The government has won a conviction here. They laid  
14 out the alleged misconduct at the trial. The United Nations  
15 has issued task force reports. There was corruption at the  
16 United Nations going that started before anything involved  
17 Mr. Ng and went far beyond anything involving Mr. Ng, and the  
18 government's prosecution has had salutary impact on that. The  
19 United Nations has investigated it. Presumably they're  
20 updating their rules and regulations to tighten up the rules  
21 around support and financial support and donations, and the  
22 government has struck a real blow against corruption at the  
23 United Nations in this case.

24 In terms of reflecting the seriousness of the offense  
25 and just punishment, we do ask the court to consider that by

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Sentence

1 virtue of Mr. Ng's status as a deportable alien, he will suffer  
2 in jail far more than a typical defendant in a similar case.

3 In all likelihood -- and we have had a series of dueling  
4 letters with the government, but I don't think there is a real  
5 debate at least in all likelihood, he is not going to be  
6 sentenced to a camp if he is sentenced to a jail.

7 He will be in a low security prison, which sounds a  
8 lot better than it is, and even more likely he will be sent to  
9 a private contract facility which the government uses for  
10 deportable aliens, where the conditions are going to be crowded  
11 and far more dangerous than they would be if he were sent to a  
12 camp.

13 The likelihood of his being assaulted is going to be  
14 much higher there. He will be particularly vulnerable because  
15 of his age, his health and very significantly, your Honor, his  
16 inability to speak or understand English. Even the Probation  
17 Department notes that as a result of that, Mr. Ng is likely to  
18 experience a sense of isolation in prison. He won't be  
19 eligible for early release. That's 10 percent of any sentence  
20 up to six months.

21 And then he's already consented to deportation. The  
22 impact of that is that he won't be brought before an  
23 immigration judge, but he will be sent, if he is sent to jail  
24 at the close of the sentence, he will be sent immediately to  
25 ICE custody and he could languish there for an indeterminate

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Sentence

1 amount of time before he is deported back to China. I don't  
2 know how long that could last. It could be a matter of days,  
3 it could be weeks and months.

4 THE COURT: Mr. Genser, I am not sure if I understood  
5 exactly. Are you saying that because of Mr. Ng's status, he is  
6 not eligible to get credit for good behavior, is that what  
7 you're saying?

8 MR. GENSER: It is early release.

9 THE COURT: To a halfway house?

10 MR. GENSER: Halfway house, and that credit which is  
11 10 percent up to six months, that is laid out in Mr. Ziegler's  
12 affidavit.

13 THE COURT: All right.

14 MR. GENSER: Considering what is sufficient but no  
15 greater than necessary to constitute a just punishment, we do  
16 ask the court to consider the punishment that Mr. Ng has  
17 already suffered in this case. He has spent a month in what  
18 was effectively a maximum security prison, I am not sure if it  
19 was MDC or MCC or some combination thereof. He was in jail for  
20 30 days. He didn't do well there, your Honor. The letters  
21 describe the impact on him. He was gaunt, he lost 15 pounds,  
22 doesn't eat western food.

23 Then for the past two and a half, almost three years,  
24 his life has been in limbo. He has exercised his right to go  
25 to trial, but the impact of this case is that his life has been

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Sentence

1       in limbo. He has been in an apartment. Certainly that is  
2 better than jail, but he hasn't been a free man. He has again  
3 under lock and key in an apartment for two and a half, almost  
4 three years already. That is something. It is not nothing.

5           He has had to live with the anxiety and expense of  
6 this case. His reputation has been shredded. His business has  
7 been knocked back on its heels. He is struggling to survive.  
8 He will be a felon for the rest of his life. He is going to be  
9 paying a fine, we're fairly confident it will be at least a  
10 million dollars. He has agreed not to contest forfeiture of  
11 over \$300,000. He has agreed to settle forfeiture allegations  
12 for one and a half million dollars, your Honor. He has paid  
13 millions of dollars in attorney's fees.

14           The question is how much punishment is enough? How  
15 much more punishment is needed in this case? That brings us to  
16 Section 3553 (a)(2)(B) and (C), the need for deterrence and  
17 protection of the public.

18           These factors, your Honor, I note that Mr. Ng has  
19 agreed to waive deportation proceedings and consent to  
20 deportation. He will never come back to America again. He  
21 will never do business here again. There is literally no  
22 chance that he will be a recidivist. Deterrence has been  
23 accomplished, both specific and general. There is no danger of  
24 further crimes by Mr. Ng. The case has received wide  
25 publicity. The government has emphatically made its point.

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Sentence

1           To wind up, the punishment Mr. Ng has suffered  
2 already, as I mentioned, the question is what further  
3 punishment is really necessary to do justice in this case. If  
4 the court believes that the offense conduct itself, the  
5 mitigating facts and with the mitigating motives that I've  
6 described warrants a sentence greater than time-served, our  
7 question is isn't that outweighed by Mr. Ng's history and good  
8 character, the life of compassion he led, the kindness of  
9 generosity he has shown throughout his life, his close family  
10 ties, the support that he has given to his employees, the need  
11 that his business has for him, and the way that he'll uniquely  
12 suffer if he is sent to jail?

13           So for all of those reasons, your Honor, we do ask for  
14 leniency and we do ask for a sentence of time-served. If your  
15 Honor cannot see to give him a sentence of time-served, we ask  
16 for a very low sentence in jail, to let Mr. Ng go back to his  
17 family and go back to China where he belongs. Thank you.

18           THE COURT: Mr. Genser, actually I have one question  
19 to follow up on your comments.

20           I've sentenced two other defendants in this case, both  
21 of whom were sentenced to jail time, both of whom I think would  
22 be characterized as less involved in the underlying criminal  
23 conduct. So why in terms of sentencing disparities, why would  
24 it be appropriate or what is your argument with why it would be  
25 appropriate here that Mr. Ng receive a non-incarceratory

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Sentence

1 sentence in light of that?

2 MR. GENSER: Your Honor, obviously the need to avoid  
3 disparate sentences is one of the sentencing factors, and we  
4 are certainly aware that Mr. Yin was sentenced to seven months  
5 and Sheri Yan was sentenced to 20 months, and we understand  
6 that the court would view Mr. Ng as more culpable.

7 Our argument, your Honor, there are differences that  
8 are personal to Mr. Ng that relate to the factors that I've  
9 laid out, your Honor. They're not almost 70 years' old. For  
10 example, Mr. Yin is a young man. He speaks English, a U.S.  
11 Citizen. What he did was essentially separate and apart with  
12 anything to do with Mr. Ng with his tax evasion.

13 Ordinarily absent all the extraordinary circumstances  
14 we have outlined, a sentence greater than those sentences might  
15 well be warranted, your Honor, but our argument is that these  
16 factors are unique to Mr. Ng. Neither of those people have had  
17 the history, lived the life that he has lived, have shown the  
18 compassion and had support of family and charities, the  
19 kindness to employees, supporting the businesses, have so many  
20 people depending on them. Neither of them would face the same  
21 issues that Mr. Ng would face in jail, and I will note that  
22 with respect to Ms. Yan, she was convicted on her own plea for  
23 \$800,000 of bribes for specific quid pro quo with no  
24 philanthropic or patriotic motive at all. She got 20 months,  
25 your Honor.

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Sentence

1           I understand the government will argue that the crime  
2 here, the alleged crime for which he was convicted is more  
3 extensive and that his involvement was more serious, but it is  
4 different. It was for fundamentally a philanthropic endeavor,  
5 and the dollars involved are not so different, your Honor.

6           Mr. Ng, certainly I know at that sentencing your Honor  
7 commented there was evidence Ms. Yan, there was evidence she  
8 was a good person. If there is evidence she was a good person,  
9 your Honor, there is a mountain of evidence that speaks to the  
10 quality of the person Mr. Ng is. Those factors I think would  
11 compensate for what we would agree would be circumstances where  
12 you would ordinarily look to a sentence that would be somewhat  
13 greater than the sentence of those two individuals.

14           THE COURT: Thank you.

15           Ms. Echenberg, do you have anything to add?

16           MS. ECHEMBERG: Yes, your Honor.

17           THE COURT: Yes.

18           MS. ECHEMBERG: The defendant before you today, your  
19 Honor, is an exceptionally rich and powerful man. He has used  
20 that wealth to pay multiple people over time, not just the  
21 conduct in this case, the other conduct that we have previously  
22 discussed. He has used that wealth to direct it at people who  
23 had the ability to influence his business. That is exactly  
24 what he did here.

25           What he was motivated by was not fundamentally a

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Sentence

philanthropic endeavor. The evidence at trial was clear. Your Honor may remember the video that we played a substantial portion of during closing argument. It talked about a development that had luxury hotels, luxury stores, a helipad. We are talking about a massive real estate development that the defendant and his family stood to gain tremendously from. So that is the motivation here, and that should not be lost.

The conduct here is incredibly serious. The United Nations is one of the premier international institutions. The defendant corrupted it. That's what he was convicted of doing. He led that crime.

The defense has talked about the conditions in jail and the designations. We addressed that in our papers. We disagree, we believe, based on our conversations with the Bureau of Prisons and what is represented in their materials, that the defendant will have the ability and he has excellent representation to advocate for him to be in the most appropriate location for him.

I want to bring the court back to the guidelines here, which is 235 to 293 months. Your Honor has ruled that is the appropriate guidelines, and the Probation Department specifically took account of all of the factors that the defense has talked about, the defendant's history, his philanthropic efforts, and with all of that in mind, the Probation Department recommends a significant sentence of 72

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Sentence

1 months.

2                   A time-served sentence here would be a terrible  
3 message to send for a case like this. As your Honor knows,  
4 international bribery in FCPA cases are incredibly hard to  
5 investigate and to prosecute. The records are abroad, the  
6 individuals are abroad. These cases are so difficult to  
7 investigate that the Department of Justice has instituted a  
8 special policy for corporations that cooperate in these  
9 investigations, to give them significant leniency. That is how  
10 difficult these cases are.

11                  So people are watching this case. People are watching  
12 what your Honor is going to do, and general deterrence is  
13 critical here. The defense has asserted our prosecution struck  
14 a real blow to corruption at the United Nations. There have  
15 been changes. The United Nations certainly took account of our  
16 case and the press has also been following the case.

17                  A significant sentence for this rich and powerful  
18 defendant, that is what is going to strike a real blow to  
19 corruption not only at the United Nations but in our major  
20 institutions and organizations frankly across the world. Your  
21 Honor, it is critical that this defendant receive a significant  
22 incarcerated sentence.

23                  THE COURT: Thank you.

24                  MR. GENSER: Your Honor, if I may respond just  
25 briefly?

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Sentence

1                   THE COURT: Yes, briefly.

2                   MR. GENSER: Your Honor, there are a number of cases  
3 involving allegations of serious conduct that we have cited in  
4 our papers where, based on factors similar to what are present  
5 here, courts have varied very, very substantially from very  
6 high guideline ranges, and it is not necessary, your Honor, to  
7 put Mr. Ng in a United States jail, at taxpayer expense, a  
8 69-year-old man who speaks no English, for the world to get the  
9 message the government wants to send.

10                  There are very, very unique factors here that would  
11 justify the sentence we are asking for and would in no way  
12 dilute the need to promote respect for the law and general  
13 deterrence. That is all we have to say. The last thing is  
14 Mr. Ng obviously will have something to say to address the  
15 court, and we ask your Honor to consider that as well.

16                  THE COURT: Absolutely.

17                  MS. ECHENBERG: I forgot to answer one of your Honor's  
18 questions about ICE custody.

19                  THE COURT: Yes.

20                  MS. ECHENBERG: If this is to factor in your decision  
21 at all, we understand from a representation from ICE that if  
22 your Honor signs the removal order, the defendant at the  
23 conclusion of any sentence would spend up to two weeks in  
24 custody. It will be very brief, and then he would be deported.

25                  THE COURT: Thank you. Mr. Ng, do you wish to be

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Sentence

1 heard?

2 THE DEFENDANT: Yes.

3 THE COURT: I don't know the interpreter's name. Are  
4 you going to be doing the translation?

5 THE INTERPRETER: Yes, your Honor.

6 THE COURT: You may proceed.

7 THE DEFENDANT: Your Honor, I would like to first  
8 thank the court for allowing me to stay out on bail during this  
9 case. Even though the past few years have been very difficult  
10 for me, it is better than being in jail. At the same time, I  
11 would like to thank the court and the government for allowing  
12 my family and friends to come visit.

13 Your Honor, I want to apologize to the court for all  
14 the trouble my actions have caused. I alone am responsible for  
15 my actions. Looking back, I am filled with regret how I went  
16 to about trying to support the Macau Conference Center.

17 Your Honor, I really believed that the Macau  
18 Conference Center it would do great things for Macau in the  
19 South South Nations. Your Honor, I would ask for your mercy  
20 not only for myself, but more importantly, for my family.

21 My wife is this year over 66 years' old. Since my  
22 youngest son passed away when he was 19 years' old, my wife's  
23 health has been deteriorating. In the past 40 years, even  
24 though I was penniless, my wife never abandoned me through  
25 thick and thin and kept me a companion. Now that she is in her

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Sentence

1 twilight years, she needs my companionship.

2 I very much hope I can continue my responsibilities to  
3 her as a husband. It seems that since I have been arrested,  
4 especially after my conviction, my creditors have been pushing  
5 me for repayment. Interest has been piling up, the bank has  
6 closed my account, the previous business partners are shunning  
7 us. The business that I built over in the past decades is  
8 facing great difficulties.

9 Since I have been allowed to stay out on bail, every  
10 day I spent a few hours every day to try to stabilize the  
11 business. If I go to jail, my children will bear my  
12 responsibilities. Even though they are very talented, but  
13 since I have been sheltered, I have always sheltered them in  
14 the -- I have been protecting them and not to let them handle  
15 these responsibilities, I am very afraid that they will not be  
16 able to handle it and to bear these responsibilities, that the  
17 business would not survive.

18 There are many employees who have been working for me  
19 and my company for decades because they trust me. I am also  
20 very afraid for the future, your Honor. I have eight  
21 granddaughters and grandsons. I miss them dearly. I very much  
22 want to go back to them, to greet them, to tell them stories,  
23 to play with them. I am very sorry for the pain and suffering  
24 I have caused my family, my friends and employees. I swear  
25 that I will never repeat my mistakes again.

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Sentence

1                   Your Honor, I sincerely wish that you could show  
2 leniency on me. My only wish is that I can return to my family  
3 as soon as possible instead of having my family to bring me  
4 home in ashes.

5                   Thank you, your Honor. Thank everybody.

6                   THE COURT: All right. Thank you, Mr. Ng.

7                   Let me ask, is there any reason why sentence should  
8 not be imposed at this time?

9                   MS. ECHEBERG: No, your Honor.

10                  MR. GENSER: No, your Honor.

11                  THE COURT: As I've stated, and the parties agree,  
12 obviously with conditions with the objections have been made,  
13 the defendant's guideline range is 235 to 293 months  
14 imprisonment. Under the Supreme Court's decision in Booker and  
15 its progeny, the guideline is just one factor that I must  
16 consider in deciding an appropriate sentence here.

17                  I am also required to consider the other factors set  
18 forth in 18, United States Code, Section 3553 (a), and the  
19 parties have addressed those issues both in their submissions  
20 as well as here today in court. So I am going to consider all  
21 of those factors, and those factors include, but are not  
22 limited to, the nature and circumstances of the offense and the  
23 personal history and characteristics of the defendant since  
24 each defendant must be considered individually.

25                  I am also required to consider the need for the

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Sentence

1 sentence imposed to reflect the seriousness of the offense,  
2 promote respect for the law, provide just punishment for the  
3 offense, and afford adequate deterrence to criminal conduct and  
4 avoid unwarranted sentencing disparities among other things.

5 First I am going to address Mr. Ng's history and  
6 characteristics, and obviously there has been a lot said today  
7 here as well as a lot of information contained in the  
8 submission. Now, I accept Mr. Ng overcame poverty and at time  
9 there was depressive conduct directed towards himself and his  
10 family by the government in China at the time when he was a  
11 child.

12 I also note that there were various deprivations his  
13 family faced, and some could be characterized as serious  
14 deprivations while he was growing up that left his family in at  
15 times despair and resulted also in poor health to his family  
16 members as well as the death of some of his siblings who were  
17 older than Mr. Ng. So I will consider that background and  
18 Mr. Ng's apparent resiliency and the success he has had as a  
19 person as part of my determination of what an appropriate  
20 sentence is for Mr. Ng.

21 Now there are numerous letters from friends and family  
22 members, former employees, current employees, business  
23 associates, just to name a few categories that paint a picture  
24 of Mr. Ng as a devoted family man as well as someone who is  
25 philanthropic and also personally generous with his time as

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Sentence

1 well as his finances. Those are documented in letter, and Mr.  
2 Genser pointed out some specific examples here today in court.  
3 Those letters describe various, as I mentioned, various acts of  
4 kindness for individuals who are in need of medical care, to  
5 citizens and folks from Mr. Ng's home town, to the citizens of  
6 Macau, including children as well as the elderly.

7 So I'll consider the views that have been expressed by  
8 your friends and family members and others in connection with  
9 your sentence, concerning your character which I, outside of  
10 the presentation of evidence here in court, I have to rely on  
11 the parties to provide that information. As I indicated, I'll  
12 consider that information in connection with determining what  
13 an appropriate sentence is here today.

14 Now, as I mentioned, in the letters they do mention  
15 the charitable contributions you have made over the years, and  
16 I will consider your philanthropic over the years and again not  
17 necessarily as a percentage of your overall wealth, although I  
18 do acknowledge the point the government makes with regard to  
19 your overall wealth and percent as being a percentage of your  
20 donations more generally really to reflect on your overall  
21 character as a person.

22 However, to the extent that certain of the letters  
23 written on your behalf take issue with your prosecution as  
24 misguided or driven by some political motivations or some other  
25 rationale other than enforcement of the law, just to be clear,

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Sentence

1 I reject those views. As I mentioned earlier in my comments, I  
2 believe the jury's verdict was reasonable, a reasonable and  
3 just outcome based on the evidence that was presented and  
4 admitted, and I have ruled as such in connection with the  
5 post-trial motions.

6 In addition, I am going to consider what was presented  
7 to me pretrial as 404 (b) evidence related to the political  
8 contributions and your interactions with the representative as  
9 well as the loan. However, the \$25,000 loan I think is less of  
10 an issue for me. So to that extent, I give that really a very  
11 little weight, if not no weight.

12 I find that the evidence presented with regard to that  
13 and the proffers made with regard to that of your past actions,  
14 I think that they're sufficient for me to consider here in  
15 terms of sentences and in terms of your sentence and what an  
16 appropriate sentence is.

17 In particular, as I mentioned earlier, with regard to  
18 the issue of specific deterrence as well as general deterrence,  
19 although I believe the allegations related to the campaign  
20 contributions, and again I understand the back-and-forth that  
21 is contained in the reports concerning what access the members  
22 of Congress had to witnesses and other things in connection  
23 with that. It is not so much the specifics again, as I  
24 mentioned earlier, of the actions and the amounts involved as  
25 it is a reflection and is probative on your apparent

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Sentence

1 willingness to utilize your money at various stages, putting  
2 aside what the underlying motivation is, but utilize your money  
3 to accomplish ends that you believed, you believed in; in other  
4 words, that included skating close to the line between legal  
5 and illegal conduct.

6           Certainly the awareness that that sort of activity, in  
7 other words, by that sort of activity, I mean utilizing your  
8 money in that way, and I'll use this term, probably not the  
9 correct term, really throwing your money around in that way  
10 caused the authorities to focus on those activities.

11           And yet despite those indications, more so with the  
12 contributions, you chose to proceed the way you did in this  
13 matter, by again utilizing money and paying folks, ambassadors  
14 and the president of the PGA rather than seeking some other  
15 alternative means of pressing something, and I accept your  
16 counsel's representation that is something that you believed in  
17 and that is being the Macau Conference Center. The ends don't  
18 justify the means, and that is what the law is designed to make  
19 sure that folks don't follow that adage in their conduct.

20           So I'll consider that information that was  
21 characterized as 404 (b) in that context, as sort of a  
22 reflection on what your state of mind was and also in an effort  
23 to make a determination, which is not an easy one to do  
24 concerning recidivism, provide punishment as well as the  
25 deterrent effect in connection with sentencing.

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Sentence

1                 Now, I also accept that a sentence of incarceration  
2 will have an impact on your family and your business. However,  
3 in just about every sentence that I impose and quite frankly  
4 that are imposed by my colleagues here in this courthouse,  
5 there is an impact on family members. It is tragic and  
6 oftentimes obviously innocent bystanders to the conduct of a  
7 loved one. So that impact I think, although I will consider, I  
8 think it is of substantially less weight than some of the other  
9 things I've mentioned here in part because unlike -- and again  
10 it is admirable that you were able to work and develop the  
11 business that you have, but many of the defendants I have who  
12 come before me have nothing or really next to nothing.

13                 They may have young children, as young as two or even  
14 younger, and the consequence of them going to jail is that  
15 their loved ones really have to be able to find a way to  
16 literally put food on the table, and it is a tragic consequence  
17 of criminal conduct that there are others involved here. As I  
18 mentioned, I will consider it, although I don't give it as much  
19 weight as I do some of the other factors I will also.

20                 I will also take into effect again, as I mentioned  
21 earlier, your age and the various infirmities you have in  
22 making a determination of what an appropriate sentence is. As  
23 I noted earlier, obviously, a sentence that is certainly in the  
24 guideline range and actually even far below that would  
25 effectively mean that you would spend the rest of your life in

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Sentence

1 prison.

2 I also recognize that you won't receive the same level  
3 of health care as you would if you were not incarcerated, but  
4 again I don't give that a substantial amount of weight. I  
5 recognize the conditions that you've had and the history, but I  
6 don't ascribe to the views that Mr Ziegler has said. I do  
7 believe that the Bureau of Prisons will be able to address your  
8 health issues during any period of incarceration.

9 Now, with regard to Mr. Ziegler's views about your  
10 designation to a low security versus a minimum security  
11 facility, I find that certain of his assertions in his  
12 affidavit certainly have some basis in history that Mr Ziegler  
13 has indicated that he has. However, I would describe that more  
14 as what is really is a term, for lack of a better one, I will  
15 say knowledgeable speculation.

16 Until the Bureau of Prisons does their calculation,  
17 while we can assume where Mr. Ng might fall in terms of a  
18 designation, there are a whole number of other factors that it  
19 didn't appear as if Mr Ziegler had considered, including the  
20 possibility of a recommendation by me concerning a facility as  
21 well as other things that the Bureau of Prisons takes into  
22 account with regard to what level of security a defendant  
23 should be placed.

24 I find that the conditions of confinement are not so  
25 onerous in a low security facility to warrant substantial

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Sentence

1 weight here, although I do recognize that they will be more  
2 onerous and in particular in Mr. Ng's case because of the fact  
3 he does not speak English. However, I do note, and  
4 historically there have been many defendants who are considered  
5 white collar defendants who are in low security facilities and  
6 come close in connection with the sentencing, I came across an  
7 individual who was sentenced recently by one of my colleagues  
8 in the Eastern District, and my understanding, again from press  
9 reports, is that he is currently housed in a low security  
10 facility, and that is Mr. Scorelli, who was recently convicted  
11 in the Eastern District. I believe he is housed in -- I don't  
12 remember, it might be Fort Dix, but I am not entirely sure.

13 So there is precedent for white collar defendants to  
14 be in a low security facility. I will consider it, but as I  
15 mentioned, I won't give it a substantial amount of weight in  
16 what an appropriate sentence is for you.

17 Next I'll turn to the circumstances and nature of the  
18 events. There is no question that you have been convicted of  
19 serious offenses. Your activities were not isolated incident,  
20 but instead occurred over a number of years. In other words,  
21 you had more than ample opportunity to rethink your approach as  
22 to how you would accomplish your end goal of having a  
23 conference center built in Macau.

24 However, at least based upon the evidence presented at  
25 trial, not only did you not change your mind with regard to how

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Sentence

1 you'd proceed, the evidence would suggest that you became, as  
2 that possibility became closer, you became more aggressive as  
3 time went on, pushing either directly or indirectly through  
4 Jeff Yin or Leung and Ashe to complete certain tasks and take  
5 certain actions in their capacity as ambassadors in Mr. Yin's  
6 case as one of your employees, with regard to Mr. Ashe as  
7 President of the PGA, as well as the actions and influence the  
8 actions of others within the United Nations. As I mentioned,  
9 in your actions here, you were undaunted in particular by the  
10 investigation that ensued in connection with the donations  
11 issue that I mentioned earlier.

12 Now, the offense here also was not something that  
13 could be described as sophisticated. It at times involved  
14 shell companies, what was portrayed, and the jury found there  
15 was sufficient evidence, fake contracts and the funneling of  
16 money internationally, all of which, whether intentionally and  
17 I think the evidence, it could be inferred that that was  
18 intentional, but even not, it certainly made the detection of  
19 that activity and the bribery scheme more difficult.

20 The parties have also mentioned, and as I mentioned in  
21 a prior sentence in this case, there is no question that there  
22 has been damage to the United Nations as an institution.  
23 Obviously, there is restitution here and I credit the defendant  
24 for agreeing to that restitution amount to the United Nations,  
25 but that is a matter of the money that was expended.

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Sentence

1                 The UN's reputation was certainly tarnished by your  
2 actions and the actions of others, in particular Mr. Ashe and  
3 Mr. Leung, but by rigging the system, you deprived the members  
4 of the United Nations of considering the merits or folly of  
5 having a permanent conference center in Macau or anywhere else  
6 in the world. In other words, it rigged the system in such a  
7 way that it didn't allow for legitimate debate concerning what  
8 the pros and cons would be for having such a conference center  
9 at all or for the location of such a conference center.

10                 In addition, although the likelihood of recidivism of  
11 someone your age is statistically very, very low, the fact you  
12 committed the instant offense when you were already in your  
13 mid-60's also somewhat defies the statistics. So although I  
14 recognize the statistical aspect of it, there are other things  
15 that impact my consideration, including your past issue with  
16 the political contributions which I think impact my  
17 consideration of the deterrent effect going forward.

18                 Now, I also think that general deterrence in this case  
19 does deserve real consideration. I understand, and I hear  
20 arguments all the time, that is there really such thing as  
21 general deterrence. I think in this case in particular,  
22 because of the fact it involved the United Nations, because of  
23 the fact it involves yourself, someone of prominence in terms  
24 of your stature as a businessperson in your own country, but  
25 also recognized here in the United States, I do think general

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Sentence

1       deterrence is an issue that I will consider here in connection  
2       with what an appropriate sentence is.

3                 In at least in part, it might give, I would hope, give  
4       pause to individuals whether they're in like circumstances of  
5       yourself or not, will give them pause to any consideration they  
6       have about doing, corrupting institutions like the United  
7       Nations to achieve their personal goals and whims in connection  
8       whatever activities that they might have and beyond the public  
9       embarrassment or inconvenience of having a criminal case filed  
10      against them.

11                In addition, I do think it is also important to send a  
12     message to those at the United Nations itself and other  
13     institutions in this country that perverting the  
14     decision-making or attempting to pervert decision-making  
15     through bribes will not be tolerated and that there are  
16     consequences to those actions.

17               So, Mr. Ng, with that, if you could please rise for  
18     the imposition of sentence. It is the judgment of the Court  
19     you be committed to the custody of the Bureau of Prisons for a  
20     period of 48 months. I will impose a period of supervised  
21     release, although I believe that in all likelihood you -- you  
22     may be seated -- you are going to be deported, but I would  
23     impose a period of supervised release of three years. You will  
24     be subject to the mandatory conditions of supervision set forth  
25     on Page 46 and 47 of your presentence report, the standard and

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Sentence

1 special conditions set forth on Pages 47 and 48 of the  
2 presentence report.

3 I am going to impose a million dollars in fines, and I  
4 will also sign the restitution order and the forfeiture order  
5 that has been presented to me for my signature. I will also  
6 execute the judicial order of removal. That has also been  
7 presented to me. You're also required to pay a special  
8 assessment on each count of \$100.00, for a total of \$600.00.

9 Now, I am not, although I recognize the government  
10 requested that you be remanded immediately, I am not going to  
11 remand you today. I am going to allow you to voluntarily  
12 surrender to the Marshal Service.

13 I find that the sentence is sufficient but not greater  
14 than necessary to comply with the purposes of sentencing set  
15 forth in 18 United States Code Section 3553 (a). Do either  
16 counsel know of any legal reason why this sentence should not  
17 be imposed as stated?

18 MS. ECHENBERG: No, your Honor. I would just ask that  
19 you state the forfeiture and the restitution amounts on the  
20 record that you intend to impose.

21 THE COURT: State the amount?

22 MS. ECHENBERG: On the record.

23 THE COURT: I believe the forfeiture amount is \$1.5  
24 million and the restitution amount is \$329,707.20, payable to  
25 the United Nations.

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Sentence

1 MS. ECHENBERG: Thank your Honor. You're imposing  
2 both of those?

3 THE COURT: Correct. In fact, just so the record is  
4 clear, I have the restitution order here and I am signing it  
5 right now. I also have the consent preliminary order of  
6 forfeiture that has been signed by the parties. I am signing  
7 that now. Lastly, I have the judicial removal along with the  
8 accompanying supporting documents which I have just signed.

9 Mr. Genser do you know of any legal reason why the  
10 sentence should not be imposed as stated?

11 MR. GENSER: No, your Honor. We would ask that -- and  
12 we appreciate that your Honor's permitting Mr. Ng to surrender  
13 voluntarily -- we ask that your Honor set that date to be no  
14 sooner than 60 days from today.

15 THE COURT: I will do that. Ms. Williams.

16 THE CLERK: July 10th.

17 THE COURT: July 10th. With regard to where, I am  
18 going to, and again I will hear the parties on this, but I  
19 intend to have Mr. Ng surrender here in this district.

20 I think I am going to continue all of the bail  
21 conditions as mentioned right now until the surrender date, and  
22 I think the logistics of -- and again I don't know where Mr. Ng  
23 will be designated, but the logistics of actually getting  
24 Mr. Ng, if it is, as I understood, might be in California or  
25 out West would be I think significant.

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Sentence

1                   MR. GENSER: On that, your Honor, I think we would ask  
2 that your Honor permit Mr. Ng to surrender directly to the  
3 facility. I think it is laid out in Mr. Ziegler's affidavit.  
4 The transportation process to the facility in custody is  
5 particularly onerous and can last several weeks. It is very  
6 difficult to get medical attention, and we can certainly  
7 arrange with Guidepost to have him delivered under guard to  
8 whatever facility the court designates.

9                   THE COURT: This is what I would suggest. I think the  
10 designated facility will be decided in advance. We'll have  
11 time. So I want you to speak with Guidepost, speak with the  
12 government, and present to me whatever the plan would be for  
13 that transportation so that I can make the ultimate decision  
14 about that.

15                  Look, it is conceivable, and I understand -- let me  
16 ask Mr. Genser, is there a specific request that Mr. Ng be  
17 housed in a low security facility in the western region of the  
18 Bureau of Prisons' system?

19                  MR. GENSER: Your Honor, we would ask he be  
20 designated, and court strongly recommend to the BOP, he be  
21 designated to LSCI Allenwood in White Deer, Pennsylvania.

22                  THE COURT: I'll make the recommendation of Allenwood  
23 or another low -- well, I will make the recommendation of  
24 Allenwood and would be willing to make a recommendation, if not  
25 Allenwood, somewhere on the East Coast if that is what you

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Sentence

1 would request.

2 MR. GENSER: Yes, we would request and that and we  
3 would propose we can actually provide specific language that we  
4 would be requesting to be included in the judgment with respect  
5 to the recommendation for designation.

6 THE COURT: Okay. The only thing, I ask you share  
7 that language with the government and hopefully there is  
8 agreement with regard to that.

9 MR. GENSER: Yes.

10 THE COURT: Okay.

11 MS. ECHENBERG: Your Honor, so it is currently our  
12 position that the defendant should surrender here as your Honor  
13 had initially ordered. We'll, of course, look at whatever the  
14 defense submits and take it up with your Honor, but that is our  
15 position.

16 THE COURT: Just to be clear, my concern with the  
17 logistics is just that. I understand the Guidepost would  
18 probably be willing to do it. The issue for me is there now  
19 has been a sentence that has been imposed. It is a sentence of  
20 incarceration for a period of time that is not insubstantial.  
21 So I think that there are differences between the pretrial  
22 release and now, so I would want to, to the extent I would  
23 change my view about that, I need to see what the plan would  
24 be, and the parties should meet-and-confer about that and  
25 present it to me in advance of, hopefully well in advance of

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Sentence

1 the 60 days we have indicated for surrender.

2 MR. GENSER: Your Honor, can we have a few days after  
3 today to confer with the government about those issues and  
4 present the court with a hopefully agreed-upon plan and some  
5 language for the designation?

6 THE COURT: Absolutely. Do you want to make it three  
7 weeks to do that, two weeks?

8 THE COURT: My Deputy Clerk, who I take counsel from  
9 in just about all matters, said next Friday, if that is  
10 sufficient. I think in part, let me just be clear.

11 I think the reason is for the judgment, so that we can  
12 have put in the judgment whatever both the language that the  
13 parties would suggest and anything else because in order to  
14 start the ball rolling, the judgment needs to be issued.

15 MR. GENSER: That is fine with us.

16 MS. ECHENBERG: One other matter with regard to the  
17 sentence.

18 THE COURT: Yes.

19 MS. ECHENBERG: If your Honor could just make clear  
20 that sentence applies concurrently to all of the counts.

21 THE COURT: I am sorry. Yes, the sentence of 48  
22 months is on each count, to be assessed concurrently on that.  
23 I apologize. I should have made that clear.

24 I think overall that is a sentence, again it is a  
25 substantial variance from the guidelines and a variance from

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Sentence

1 where Probation came out. So even if I had ruled on certainly  
2 with regard to many of the issues, I still think that is an  
3 overall appropriate sentence in this case.

4 MR. GENSER: Your Honor, will the defendant, would the  
5 court recommend the defendant receive credit for the 30 days he  
6 spent in jail already?

7 THE COURT: He should automatically receive that under  
8 the way that they calculate, but to the extent I need to  
9 recommend that, I would do that, yes, since it is the same  
10 offense. Is there anything else?

11 MS. ECHENBERG: Just that your Honor advise the  
12 defendant of his right to appeal. We would make a motion to  
13 dismiss the counts in the underlying indictments.

14 THE COURT: Mr. Ng, you have the right to appeal your  
15 conviction and sentence. The notice of appeal must be filed  
16 within 14 days of the judgment of conviction. If you're not  
17 able to pay the cost of an appeal, you may apply for leave to  
18 appeal in forma pauperis. If you request, the Clerk of the  
19 Court will file and prepare a notice of appeal on your own  
20 behalf.

21 Now, Mr. Ng, I know it is not the sentence that your  
22 attorneys had asked for, but I hope that when you are released  
23 from custody, you go home and spend time, and I should have  
24 mentioned that it is clear that your family, there are at least  
25 26 members, friends and family that are here if not more of you

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1 and it is clear that they support you. I suggest that you make  
2 use of that support while you're incarcerated and once you're  
3 released. Is admirable they have stood by you and I believe  
4 that they will continue to stand by you.

5 I will dismiss the open counts in the underlying  
6 indictments. Is there anything else?

7 MR. GENSER: Yes, your Honor. We would actually make  
8 an application for bail pending appeal. We intend, obviously,  
9 to appeal the conviction and possibly the sentence, and we  
10 would make an application orally for bail pending appeal.

11 We're prepared to address that today, although given  
12 that your Honor has granted Mr. Ng some time and ability to  
13 voluntarily surrender, it is possible we could come back  
14 another day to argue that. We are prepared to argue that  
15 today. I am prepared to argue the risk of flight issues, and  
16 my colleague, Ms. Murphy, is here, an appellate specialist, is  
17 prepared to outline the second prong of that, which is the  
18 likelihood of substantial success and substantial questions on  
19 appeal.

20 THE COURT: I guess the question I have, since we do  
21 have some time, I am willing to allow limited submissions if  
22 you like. The government has in their briefs to me, in their  
23 sentencing submission did address the issue. I note in the  
24 defense submission not in a substantive way, with regard to  
25 case law or we can address it now.

15BHNG2

1 MR. GENSER: We would be happy to address it.

2 (Off-the-record discussion)

3 THE COURT: I do lose track of time. Well, should we  
4 come back after a brief break to allow people to have lunch and  
5 then continue this argument?

6 MR. GENSER: It is fine with me, your Honor. The only  
7 constraint that I have, I have an arraignment in front of Judge  
8 Failla at 3:00 p.m.

9 THE COURT: Well, why don't we take half an hour and  
10 then come back. Does that work for the government?

11 MS. ECHENBERG: Yes, your Honor.

12 MR. GENSER: That would be fine.

13 THE COURT: So it is now 1:40. We are going to come  
14 back in half an hour.

15 (Luncheon recess)

16 (Continued on next page)

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I5BHNG2

1                   AFTERNOON SESSION

2                   2:10 p.m.

3                   (In open court)

4                   THE COURT: Mr. Genser, are you ready to proceed?

5                   MR. GENSER: Yes, your Honor.

6                   THE COURT: OK.

7                   MR. GENSER: Actually, if I may just have one moment.

8                   THE COURT: Oh, sure, go ahead.

9                   MR. GENSER: Your Honor, we have an application for  
10 bail pending appeal. Obviously, the burden has shifted. We  
11 have the burden to prove by clear and convincing evidence that  
12 Mr. Ng will not be a danger to the community or a risk of  
13 flight, and there's also the second part of the issue of  
14 substantial questions on appeal which my colleague, Erin  
15 Murphy, will address.

16                  Your Honor, I would suggest there's no question here  
17 of danger to the community. That's never been an issue in the  
18 case.

19                  With respect to risk of flight, I think that the fact  
20 that Mr. Ng is here today is all the evidence that your Honor  
21 needs to support our burden. Mr. Ng was convicted. He's  
22 complied with his bail conditions in every respect. Guidepost  
23 has confirmed to us and to the government that Mr. Ng has  
24 complied. They feel confident they can assure his continued  
25 compliance.

I5BHNG2

1                   Your Honor, Mr. Ng has understood that today could be  
2 a day when he would be sentenced to a sentence of perhaps 72  
3 months, which is what the probation department recommended, or  
4 perhaps substantially more than that, which is what the  
5 government sought. And he also understood, as the government  
6 had informed us long ago, that they were going to seek his  
7 immediate remand today, and he's here. That ought to be enough  
8 to demonstrate to the Court that he has no intention to attempt  
9 to flee and that, even if he did, the conditions that the Court  
10 has set very carefully, which are very stringent, are more than  
11 adequate to assure his appearance.

12                  And unless the Court has questions about that, I think  
13 that really the risk of flight should be an easy issue for the  
14 Court to resolve in our favor.

15                  THE COURT: OK. But would you agree with me that  
16 before today, everything was a possibility. It's now assured  
17 that Mr. Ng is facing jail time. Putting aside whether it  
18 tips, entirely tips, the balance, that actually militates, that  
19 actually cuts against, in other words, that's another factor  
20 that I need to weigh in addition to what I've weighed before,  
21 which I did for purposes of bail. That is a change in the  
22 circumstances here. It was a possibility; it's a reality now.  
23 Obviously, not only do people have hope, but, obviously, there  
24 were a lot of things that militated towards that hope,  
25 including the probation department granting a substantial

15BHNG2

1 variance.

2                   The government -- how often do you see that, right,  
3 where there's a variance that the government thinks is  
4 appropriate? So the issue is what he's now facing, it's a  
5 reality and not a possibility. So doesn't that factor weigh on  
6 the side of flight?

7                   MR. GENNER: Your Honor --

8                   THE COURT: Or possibility of flight, I should say.

9                   MR. GENNER: I think it certainly weighs, but I think  
10 the question is how much weight? And I think, number one, yes,  
11 there was hope that he would get a sentence of time served, but  
12 Mr. Ng understood that it was a hope and that the greater, much  
13 greater, likelihood was that there would be a jail sentence  
14 perhaps as high as 72 months or higher. And Mr. Ng is resigned  
15 and -- Mr. Ng stood up and I think he made a very moving and  
16 important statement to the Court that the Court can also  
17 consider and should consider. I think it's evident that Mr. Ng  
18 has resigned himself to accepting whatever the Court has  
19 imposed and that he has to serve, not from a legal perspective,  
20 we intend to challenge it, but that he's not going to try and  
21 deal with the situation by essentially committing a crime and  
22 somehow trying to flee out of his apartment, and that's  
23 evident. Nothing about the sentence that was imposed is going  
24 to create such an incentive to flee that it materially changes  
25 the calculation or the risk of flight.

15BHNG2

1           I think the other thing that we can point to are the  
2 conditions. I think the government during their comments noted  
3 that the confinement to the apartment is doing what it was  
4 intended to do, and it's going to continue to do what it was  
5 intended to do. There's no way he could escape if he wanted to  
6 escape. There's no realistic possibility of it. And there's  
7 no reason to think that he has any intention to make any effort  
8 to do that.

9           I think, your Honor, you have a two-year track record,  
10 six months of which have been after the conviction when the  
11 guidelines were 25 years. I don't know if I did the math  
12 right, but something in that range, and all before the  
13 probation report came out, before we knew there was going to be  
14 the potential of at least an agreement from probation and then  
15 potentially from the government that there should be some  
16 variance. You know, the risk was something much higher than  
17 that based on the guidelines.

18           So for all those reasons, I think your Honor has ample  
19 evidence to conclude that Mr. Ng is not a flight risk under the  
20 conditions that your Honor has set.

21           THE COURT: OK. Thank you.

22           Ms. Murphy.

23           MS. MURPHY: Thank you, your Honor.

24           If I could start with just the standard that we're  
25 dealing with here in terms of the substantial question. The

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1 question for the Court is whether our appeal will present a  
2 substantial question of law or fact that's likely to result in  
3 reversal or a new trial. The Second Circuit has made clear  
4 that doesn't mean we have to demonstrate to you we're likely to  
5 prevail. Likely refers to if we prevail on our substantial  
6 question, are we likely to obtain the relief of reversal or new  
7 trial? The substantial question test asks only whether you  
8 have a close question, one in which the Second Circuit very  
9 well could come out the other way.

10 Now, this is a prosecution that's really  
11 extraordinarily unusual in several respects. We have a foreign  
12 national accused of bribing foreign officials in their capacity  
13 as U.N. ambassadors. So, unsurprisingly, we have some really  
14 novel legal issues here that haven't come up in other cases  
15 before in the Second Circuit. I know your Honor is familiar  
16 with some of the legal issues here. They've been briefed and  
17 argued in the pretrial proceedings, so I won't belabor them to  
18 too much detail, but if I could just go through the two -- two  
19 of the principal ones.

20 THE COURT: Give me one moment, Ms. Murphy.

21 Sorry about that. Go ahead.

22 MS. MURPHY: No problem.

23 So the first substantial question on appeal is whether  
24 the United Nations --

25 (Pause)

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1                   THE COURT: Go ahead.

2                   MS. MURPHY: No problem. The first substantial  
3 question is whether the United Nations qualifies as an  
4 organization for purposes of Section 666. I'm sure the  
5 government will tell you that the Second Circuit already  
6 resolved this question in the *Bahel* case, but that case just  
7 didn't concern the meaning of the term "organization" under the  
8 statute. And there's strong arguments that the textual matter,  
9 as a legislative history matter, in terms of canons of  
10 interpretation that organization really means private  
11 organization in this statute, not public.

12                  THE COURT: Let me ask is this: Because there are six  
13 counts here --

14                  MS. MURPHY: Sure.

15                  THE COURT: -- at least by my estimation, the proof  
16 that would be required for any of the six counts is essentially  
17 the same. In other words, is there case law relating to --  
18 would you have to run the table? In other words, it's  
19 conceivable that the Second Circuit might agree with you about  
20 whether it's 666, or whatever, but not necessarily on all of  
21 the other counts, one or more of the other counts. Does that  
22 result in a new trial?

23                  MS. MURPHY: Well, so we believe that -- the two  
24 principal issues that I would bring up today are 666 and the  
25 *McDonnell* official acts issue. And I think that if we were to

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1 prevail on both of those issues, it would impact every count in  
2 the case, because if the court -- if the Second Circuit were to  
3 conclude that there was an official acts problem with both the  
4 FCPA and the 666 charges, that would impact every count in the  
5 case because the first four counts depend on both -- on one or  
6 both of 666 and the FCPA. And then Counts Five and Six, the  
7 jury was instructed that they could rely on 666, the FCPA, or  
8 the foreign law allegations.

9 THE COURT: What about the foreign law, though? How  
10 does *McDonnell* implicate the foreign law determination for  
11 purposes of, I think it's, money laundering?

12 MS. MURPHY: Sure. The problem, the reason we'd be  
13 likely to get a new trial on that is because the jury wasn't  
14 asked which theory it relied upon for its money laundering  
15 convictions. Under the Second Circuit and clear Supreme Court  
16 case law, if you can't tell which theory the jury relied on  
17 that, if they were instructed on multiple theories and you  
18 can't tell which one it is, then you have to have a new trial.  
19 And I don't really see how, on this record, you could argue  
20 that anybody knows to a certainty that the jury relied on the  
21 foreign law charges instead of these two substantive charges  
22 where it had already found convictions.

23 THE COURT: Was there a request for a verdict sheet  
24 with regard to that? Was there a request at trial? I don't  
25 remember there being one, not that that means that you're not

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1 correct on the law. I'm just wondering. I just don't  
2 remember.

3 MS. MURPHY: I have to say I don't know offhand  
4 whether there was a request to do it separately, but it does  
5 happen quite often that you don't have a request to separate it  
6 out, and the relief when you have a situation where the jury  
7 got separate theories and you can't tell which one they relied  
8 on is it has to be a new trial.

9 THE COURT: All right. I'm sorry I interrupted you.

10 MS. MURPHY: Sure. No problem.

11 In terms of 666, we think there's strong arguments  
12 there that it's a private organization. I think there's a  
13 textual argument on that, and the Second Circuit didn't have to  
14 confront that argument in *Bahel* because it was focused on a  
15 different part of the text. Here, we have a statute that  
16 separately applies to organizations and government agencies.  
17 You wouldn't really need that separate piece if organizations  
18 were really such a broad term that it encompassed everything.  
19 You have a statute that says on its face what kind of  
20 governmental entities it was to apply to, and they're all  
21 notably domestic: state, local, and tribal. They don't include  
22 foreign governments and they don't include international  
23 governments, which actually is a notable contrast to the FCPA  
24 which actually specifically defines a foreign official to  
25 include a public international organization.

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1           So on the face of the statute there are indications  
2 that it wasn't intended to reach public quasi-sovereign  
3 international organizations like the United Nations, and the  
4 legislative history of the statute actually says that it was  
5 supposed to reach private organizations and state and local  
6 government agencies.

7           So particularly when you take all of that in  
8 combination with the canon of interpretation that says statutes  
9 shouldn't be read to create unreasonable interference with the  
10 sovereignty of foreign nations, which particularly as to 666  
11 this would since 666 applies to both the payor and the  
12 recipient, we believe it's at least a close question on which  
13 the Second Circuit could very well come out the other way on  
14 whether the 666 charges belonged in this case at all, which  
15 would impact several of the counts in the case.

16           THE COURT: OK.

17           MS. MURPHY: We also believe there are substantial  
18 questions here about the application of *McDonnell* and the  
19 official acts doctrine that it sets forth as to both of the  
20 statutes in this case. We have two statutes that were  
21 patterned after Section 201, which is the very statute that the  
22 Supreme Court was interpreting in the *McDonnell* case. And we  
23 have two statutes that raise all the same constitutional  
24 concerns as Section 201 and kind of the entire array of federal  
25 bribery and corruption statutes because you have serious

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1       vagueness concerns in terms of fair notice and arbitrary  
2 enforcement if these statutes are read exceptionally broadly.

3       You have First Amendment concerns if they're read exceptionally  
4 broadly, and you can have both interference with state  
5 sovereignty as to 666 and interference with foreign sovereignty  
6 as to both statutes in reading them in this manner.

7               Now, obviously, the text of these statutes is not  
8 identical to Section 201, and in particular, the FCPA does have  
9 that broader language that refers to securing an improper  
10 advantage. But, if anything, the sheer breadth of that  
11 language, just read in isolation, kind of makes the  
12 constitutional terms all the stronger.

13              THE COURT: But here, right, at least there was an  
14 attempt to address *McDonnell* in the jury charge and the jury  
15 instructions. Why isn't that sufficient?

16              MS. MURPHY: Sure.

17              THE COURT: So not unlike, again, different sort of  
18 statutes, but not unlike the trial which was just recently  
19 resolved, the Silver trial, or the Skelos trial which is going  
20 to come up, which the Second Circuit reversed and set a new  
21 trial, they didn't say you're out of the box. In other words,  
22 they basically said you can go for a new trial.

23              So why wouldn't the jury instructions be enough here  
24 with regard to these statutes that we're considering?

25              MS. MURPHY: So, first, there wasn't an official acts

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1 instruction on the FCPA charges at all, so that's an  
2 independent problem.

3 As to 666, there was an instruction and we appreciate  
4 that your Honor gave an instruction, but we don't believe that  
5 the instruction that was given was sufficient to do what  
6 *McDonnell* needs a jury to do, which is understand, really, the  
7 distinction between actions taken in official capacity and  
8 actions that qualify as the kind of official acts *McDonnell* had  
9 in question.

10 The couple things -- one of them, these are ways in  
11 which the instruction differentiated from the one that we had  
12 requested. I mean, in one respect, we requested instructions  
13 that would have clearly delineated what we see as the two  
14 distinct requirements of *McDonnell*. The first is that you need  
15 a specific and focused matter, something that is or could be  
16 pending before the, here, United Nations; and the second would  
17 then be that you need the official actor decision on that  
18 specific matter. The instruction the jury got instead kind of  
19 blended the two concepts together, and basically ended up  
20 saying what you need is something that's specific and focused  
21 on a matter. I think that doesn't really delineate those two  
22 prongs in the way that *McDonnell* requires.

23 The other thing the instruction didn't do, and I think  
24 if you look back at *McDonnell* and what the court was talking  
25 about and was concerned there with, is there is a notion that

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1 the instructions have to be tailored to the things that are  
2 being argued in the particular case. Here, our instruction  
3 would have told the jury that meeting with someone,  
4 participating in the meeting is not an official act, which is  
5 really an important distinction in this case given that the  
6 government repeatedly argued and invited the jury to conclude  
7 that this trip to Macau was an official act just because it was  
8 taken in official capacity. We don't believe that that's the  
9 kind of official act that qualifies under *McDonnell*. And the  
10 instruction, by not specifically telling the jury that, didn't  
11 really tailor to the facts of this case what was and wasn't an  
12 official act.

13           Here, I think it's compounded by the fact that the  
14 government did repeatedly -- basically tried this case for  
15 official acts. We think at least three of those are not  
16 official acts within the meaning of *McDonnell*. So you have a  
17 real problem with the government really inviting the jury  
18 explicitly to treat things as official acts that are not  
19 official acts and that the instruction doesn't make  
20 sufficiently clear to the jury are not official agents.

21           So I think with all of that, I don't mean to suggest  
22 that we don't also have an argument about the sufficiency of  
23 the evidence and other arguments in the case, but given that  
24 particular problem with this issue, which is one that the  
25 Second Circuit hasn't confronted in the FCPA context, this is a

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1 substantial question on which the Second Circuit clearly could  
2 come out in our favor. And if they did, given that the  
3 official acts aspects of the case impacts both 666 and the FCPA  
4 charges, which themselves impact every count in the case, we'd  
5 be likely to obtain a new trial if we prevailed on these  
6 arguments.

7 THE COURT: OK. Thank you.

8 For the government.

9 MR. ZOLKIND: Thank you, your Honor.

10 Your Honor, it has been nearly a year since the  
11 defendant was convicted by a unanimous jury of serious  
12 corruption and money laundering crimes, crimes that dated back  
13 to at least 2010 and crimes which the Court has now determined  
14 warrant a significant term of imprisonment.

15 Your Honor, the defendant faces at this point a much  
16 steeper burden in terms of his argument to be kept out on bail  
17 than he faced at any previous point in this case, and it cannot  
18 meet that burden. He can't meet either prong of it. As I will  
19 discuss, the defendant should be detained at this point.

20 Your Honor, first, with respect to the standard, I  
21 think, just to be clear, the defendant has the burden of  
22 showing both by clear and convincing evidence that he is not  
23 likely to flee and, in addition, that there are substantial  
24 issues that, if resolved in his favor on appeal, are likely to  
25 lead to a reversal of his conviction or a new trial.

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I'll address that in a moment, but I think, to get right to the heart of one of the Court's questions, the government's view is that he does need to sweep the deck, so to speak. He needs to win on every single count, essentially, in order to get a new trial or reversal because the Court imposed the same term of imprisonment concurrently as to each count.

Let me address the risk of flight first. Just briefly, we've argued this in front of the Court many times, but the Court has previously found repeatedly that the defendant does pose a significant risk of flight. I think it's important just to recall that the Court has made that finding and for good reason, and the Court has imposed truly extraordinary bail conditions to address that risk of flight, but the risk of flight has always been there. The defendant now knows to a certainty that he is facing a serious term of imprisonment, 48 months of imprisonment. And he's argued repeatedly, he's argued today, that jail is going to be very difficult for him. He's repeatedly let the Court know the extent to which he is fearful of going to jail in this country.

So his incentive to flee, which has always been there, is greater now than it has ever been before, and the Court alluded to that. I think there's really no dispute about that, no serious dispute, that the incentive has gotten much greater in light of today's sentencing.

In prior applications for bail, the defense has argued

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1 that the defendant wasn't motivated to flee because he believed  
2 that he'd be acquitted at trial, and then after he was  
3 convicted, the argument was that he believed strongly in his  
4 arguments for a non-incarceratory sentence. Those arguments  
5 don't apply at this point.

6 He has new motivations. We don't know whether there's  
7 ever been an attempt to flee before. We have no indication  
8 that there is, but that's not to say that in light of the  
9 change of circumstances, there wouldn't be a new motivation.  
10 So I don't think that the past is necessarily a guide in light  
11 of the changed circumstances.

12 So then, obviously, he has an argument about his  
13 belief in his likelihood of success on appeal. Our view is  
14 that the likelihood of success on appeal is very low. And let  
15 me turn to that now.

16 So, again, and the Court pointed this out, it's  
17 critical to keep in mind that this is not a case in which the  
18 defendant was convicted of just Section 666 and a conspiracy to  
19 violate 666, where if the defense can persuade the appeals  
20 court that there was a problem with the 666 counts, the whole  
21 thing is getting reversed. Here, the defendant's convictions  
22 stands on multiple, independent different pegs. He was  
23 convicted not just of 666 but also of two different FCPA  
24 substantive counts and money laundering counts which were  
25 predicated both on the 666, the FCPA, and Antiguan and

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1 Dominican law, which have their own unique elements.

2 So to win, to get his convictions reversed or get a  
3 new trial, the defendant has to do more than overturn his  
4 Section 666 conviction, which we don't think there's a  
5 likelihood of that happening in any event; he has to do that  
6 for each of those counts.

7 Let me turn to the specific arguments that were just  
8 raised. So, first of all, the argument with respect to whether  
9 the United Nations is an organization. The first thing to say  
10 about that is that argument applies only to Section 666. So  
11 even if that argument were adopted by the circuit, that would  
12 have no bearing whatsoever on his FCPA convictions, on his  
13 conspiracy conviction. And I should note there was a special  
14 verdict form for the conspiracy charge, and so the jury  
15 indicated that that conviction was predicated on each of the  
16 underlying counts. So that's the first thing to say about --  
17 regardless of what the circuit says about whether or not the  
18 U.N. is an organization, that only impacts Section 666.

19 On the merits of that argument, as the Court knows,  
20 this was the subject of extensive briefing in the motion to  
21 dismiss. The Court read all the precedents and arguments that  
22 the defense advanced and rejected that argument. We think it  
23 did so for exactly the right reasons, most notably because the  
24 Second Circuit has already addressed this issue in the *Bahel*  
25 case. So I think another panel of the circuit would be very

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1 hard pressed to reevaluate that issue in light of *Bahel*. It  
2 would really require the circuit to sit *en banc*. I think  
3 that's not at all likely to happen.

4 With respect to the argument about whether Congress  
5 intended Section 666 to apply to an organization like the  
6 United Nations, cases again and again have talked about the  
7 purpose of Section 666, which is to safeguard federal money.  
8 The purpose of Section 666 is to ensure that federal money that  
9 is going to organizations is not squandered through corruption.  
10 The federal government spends, as the Court knows, hundreds of  
11 millions of dollars every single year on the United Nations.  
12 So using that statute to enable the federal government to  
13 enforce -- to ensure that U.S. money is not going to fund an  
14 organization that is afflicted with bribery and corruption is  
15 exactly in line with what Congress intended Section 666 to be  
16 about.

17 I don't think the fact that it applies to an  
18 organization like the U.N. but not to foreign governments is at  
19 all strange. There is the FCPA which applies outside the  
20 United States to foreign officials, and there's Section 666  
21 that applies to state and local governments and to federally  
22 funded organizations. I'm not at all conceding that Section  
23 666 wouldn't have some potential application outside the United  
24 States. That wasn't presented in this case. Here, the U.N. is  
25 headquartered right here in New York. This was not an

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1 extraterritorial application of Section 666, and they're not  
2 arguing that; that wasn't the argument that was just raised.

3 So for all those reasons, I don't think that is  
4 remotely a substantial issue that's likely to result in a  
5 reversal or a new trial.

6 With respect to the second and last issue that the  
7 defense raised, *McDonnell*, there's several reasons why  
8 *McDonnell* does not at all raise an issue that's likely to lead  
9 to a reversal or new trial.

10 Number 1, as the Court again alluded to, the Court  
11 instructed the jury on *McDonnell* with respect to Section 666,  
12 and that wasn't because the government necessarily concedes  
13 that the Court had to do so, but we requested that instruction  
14 in an abundance of caution. And, in fact, the Court gave, I  
15 think, a broader, more robust instruction than the government  
16 had even proposed. So I think the Court did, in fact, adopt  
17 much of what the defense was requesting with respect to a  
18 *McDonnell* instruction. So with respect to 666, they were  
19 instructed on *McDonnell*.

20 With respect to the FCPA, there is no court that has  
21 found that *McDonnell* applies to the FCPA. So for the defense  
22 to argue that that is a substantial issue that's likely to lead  
23 to reversal or a new trial, what they're saying is that this is  
24 going to be the first case that leads to a court deciding that  
25 *McDonnell* applies to the FCPA. There are very good reasons why

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1       the Court, this Court, addressed that issue and held to the  
2 contrary. And specifically, it's because, among other things,  
3 the FCPA is explicitly much broader than Section 201 or Section  
4 666, and it applies, by its own terms, to corrupt payments that  
5 are designed to obtain an unfair business advantage. There's  
6 no way to read that language as requiring proof of an official  
7 act.

8                   So that's the FCPA. And then, of course, there's even  
9 less reason to think that *McDonnell* would apply to Antiguan or  
10 Dominican law.

11                  Just another point that gets, I think, less to the  
12 sort of legal issue and more to a factual sufficiency,  
13 evidentiary sufficiency argument that was alluded to by the  
14 defense. They claim that the government proved or attempted to  
15 prove four official acts. I understand why they're making that  
16 argument and why they articulated it that way to the circuit.  
17 It's easier to point at the four actions that the government  
18 talked about, but the government did not in its pretrial  
19 briefing or at trial ever confine itself to those four specific  
20 acts. We focused on those four acts and argued that they were  
21 important evidence of the scheme and of the crime, but the  
22 official act that the government has always been most focused  
23 on, both in its legal arguments to the Court and in its  
24 arguments to the jury, was the defendant's agreement with  
25 Ambassador Ashe and Ambassador Lorenzo to establish a formal

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1 U.N. center in Macau. That was the subject of the agreement;  
2 that was the official act, at the end of the day, that was the  
3 subject of the corrupt agreement.

4 So whether or not a particular U.N. document or the  
5 revision to that U.N. document was an official act, regardless  
6 of whether a particular contract was an official act, and  
7 certainly regardless of whether a trip to Macau was an official  
8 act, the government's going to argue about particular official  
9 acts, but even if the circuit doesn't agree, there's really no  
10 way to dispute that an agreement to establish an official U.N.  
11 center in Macau was an agreement to obtain official action.  
12 That was the subject. And so, again, I don't think arguments  
13 about the four actions that did take place before the  
14 defendant's plan was disrupted and he was arrested at all raise  
15 a substantial issue that could potentially lead to a reversal  
16 or a new trial, let alone likely to do so.

17 Unless the Court has any questions, I'll sit down.

18 THE COURT: OK. Thank you.

19 Mr. Genser.

20 MR. GENSER: Yes, if I can just respond a little bit  
21 on risk of flight.

22 THE COURT: Yes.

23 MR. GENSER: Your Honor, at every point when there's  
24 been a bail determination, the government has stood up and told  
25 the Court the parade of horribles and the enormous incentives

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1 that Mr. Ng has to flee and how the conditions, the very strict  
2 conditions that the Court has set, aren't going to be  
3 sufficient. Every time the government's been wrong, and  
4 they're wrong again.

5 I want to also point out that earlier the Court asked,  
6 well, does the certainty of the sentence that the Court has  
7 imposed make the risk of flight more acute? And I think I  
8 agree that it could in some respects, but in another respect,  
9 it doesn't. It's at least a wash, or maybe it even reduces the  
10 incentive to flee because you're taking the uncertainty, which  
11 includes a very, very high end range of potentially more than  
12 25 years in jail that the defendant faced, that the government  
13 argued created an enormous incentive to flee, and you are  
14 replacing that with the certainty of, relative to that level, a  
15 much more moderate amount.

16 So from that perspective, in some ways it actually  
17 reduces the incentive to flee because the real concern is that  
18 Mr. Ng was going to spend the rest of his life in jail, and  
19 we're very grateful that, based upon the sentence that your  
20 Honor imposed, he's likely not to spend the rest of his life in  
21 jail. So I would just point that out as well. I don't think  
22 that the risk of flight is a serious issue.

23 The other point I want to make is that the strength of  
24 the appellate prong of this discussion and the faith that  
25 Mr. Ng has in those arguments and in the appellate team that

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1 he's assembled, very able team, including Ms. Murphy and also  
2 Paul Clement, former Solicitor General of the United States,  
3 lots of appellate experience.

4 THE COURT: Some would say able is probably putting it  
5 mildly.

6 MR. GENSER: I'm trying to be modest about my partner  
7 who I think is terrific.

8 But I think the point is, your Honor, that Mr. Ng now  
9 has something else to hope for, something that he believes in,  
10 and he believes in his chances on appeal as Ms. Murphy  
11 outlined. And he's committed to that. He's committed to  
12 pursuing that, and I think that factors in and reflects back on  
13 the question of risk of flight.

14 So I think when you considered all that together,  
15 there's no material increased incentive. And to the extent  
16 there was, your Honor's seen he has no -- he's expressed his  
17 feelings about the case, and your Honor can tell he's resigned  
18 to seeing this through, complying with the Court's rulings.  
19 And the whole concept of risk of flight is not what should hold  
20 up granting bail pending appeal.

21 Thank you.

22 THE COURT: OK. Thank you.

23 Ms. Murphy?

24 MS. MURPHY: So first on 666, we acknowledge 666 is  
25 not going to knock out every charge in this case, but our

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1 argument on 666 is very important because it does matter for  
2 several of the counts in this case. So if the Second Circuit  
3 agrees with us that it shouldn't have been in this case, that  
4 will be critical to conspiracy, to 666, and also to the money  
5 laundering charges.

6 As for the *Bahel* decision, the Court just did not  
7 address the question of organization there. The notion that  
8 the court would need to go *en banc* to answer a question that  
9 *Bahel* just wasn't confronted with and it doesn't address at all  
10 is simply not correct. The court can't kind of *sub silentio*  
11 have interpreted statutory language that nobody put at issue in  
12 the *Bahel* case. And given that we believe there's textual  
13 arguments here about reading organization narrowly and not just  
14 arguments generally about how to read statutes as a general  
15 matter, this is just clearly an open question on which *Bahel* is  
16 relevant but is not conclusive.

17 The government also notes that applying 666 to the  
18 United Nations would achieve the government's interests. Well,  
19 that can be said of applying any number of federal criminal  
20 statutes in kind of what is essentially a sort of  
21 extraterritorial context that involves foreign nationals and  
22 foreign officials. That's precisely why there's a canon of  
23 interpretation that the courts are not supposed to read  
24 statutes to create undue interference with foreign nations  
25 unless the statute makes clear that that was Congress' intent.

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1 And this statute just does not make that clear at all. I think  
2 it is notable that in comparing that to the FCPA, you can see  
3 in the FCPA when Congress wants to reach a foreign  
4 international organization, it knows how to do so and says so  
5 on the face of the statute.

6 If I could just make a couple quick points about  
7 *McDonnell*. The government notes that the Second Circuit would  
8 be the first court to hold that *McDonnell* applies to the FCPA.  
9 They'd be the first court to rule on that issue that we're  
10 aware of. We're talking about a two-year-old decision and a  
11 statute on which cases are rarely brought to trial and there  
12 are very few appeals. While there are a few cases that have  
13 mentioned the issue, we're not aware of any court that has  
14 actually confronted the question squarely and resolved the  
15 question of whether the FCPA is impacted by the *McDonnell*  
16 decision. That alone cuts in favor of treating that as a  
17 substantial question since the Second Circuit has also said  
18 part of the consideration in the substantial question analysis  
19 is whether you're dealing with a novel question, which that  
20 question really is here.

21 The one other point that I would make on *McDonnell* is  
22 while the government has an argument that maybe there is one  
23 official act here, and I don't mean to concede that there is,  
24 but that doesn't really get them all the way home since we are  
25 entitled to bail if we're likely to get a new trial. And I

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1 don't think there's any dispute, I don't even hear the  
2 government disputing that they relied on many official acts  
3 here, four in particular and perhaps some others, and we  
4 believe that they invited the jury to convict on things that  
5 they classified as official acts that we believe, as a matter  
6 of law, are not official acts.

7 So absent an instruction that made crystal clear to  
8 the jury that they could not do that, we believe we have a  
9 substantial question about whether the FCPA charges can stand  
10 and the 666 charges, since both of them rely on the official  
11 acts. And as I noted at the beginning, without those two  
12 pieces, there has to be a new trial.

13 THE COURT: OK. Thank you.

14 I've considered the arguments of the parties, and I  
15 looked and, as counsel knows, I have given a substantial amount  
16 of time to the issue of bail here. I do think that the  
17 sentence, certainty of the sentence of 48 months is something  
18 that does weigh, tilt, on balance, because I think if it wasn't  
19 clear from the amount of time I spent on it that it was a very  
20 close call for me in making the determination that bail --  
21 there could be conditions that would satisfy that. I think, on  
22 balance now, that I find that the defense has not met its  
23 burden with regard to clear and convincing evidence that there  
24 isn't a risk of flight here.

25 Again, these are close calls. And I would say that

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1 when I made the decision with regard to granting bail, there  
2 were arguments -- I don't know whether they were explicitly  
3 articulated here. I think they may have been -- that the  
4 methodology that I was using, in other words, the fact that  
5 Mr. Ng was a person of means and could actually accomplish a  
6 lot of the things that were requested in the bail package  
7 itself would be something that wouldn't be -- again, I think it  
8 is appropriately considered under the Bail Reform Act; some of  
9 my colleagues have disagreed about that. That's the only point  
10 I would make on that.

11 Now, with regard to the issue that the appeal is going  
12 to raise substantial questions of law or fact likely to result  
13 in either reversal or new trial and otherwise, I think, as I  
14 mentioned and as my questions may have indicated, there are six  
15 counts here. With regard to the *McDonnell* issue, as I was at  
16 the time, I was convinced that the jury instruction that I  
17 utilized was sufficient to address the concerns relating to  
18 that.

19 With regard to the 666, while I do agree that *Bahel*  
20 isn't on point, and I think I've discussed this in the past, it  
21 is a reference point for me both in terms of 666 and statutes  
22 like 666, but also with regard to, as I mentioned earlier in  
23 the sentencing, with regard to the considerations relating to  
24 the application, and this is a guideline issue, of 2C1.1 to  
25 organizations like the United Nations.

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1           So I think, everything considered with regard to that,  
2 I find that there isn't clear and convincing evidence that  
3 there's a likelihood to be reversal and a new trial here.

4           Putting that aside, and I understand that the FCPA,  
5 that no one has addressed the issue of the FCPA and how that  
6 relates to it, in other words, the defense doesn't have in its  
7 quiver of arguments that there are cases that basically  
8 indicate that, in fact -- that would support the argument that  
9 if there's clear and convincing evidence, that it should be  
10 applied. Again, in connection with the decision with regard to  
11 how to construct the jury charge, I think we spent, I think,  
12 the better part of a day, if not more, on the jury charge  
13 issues. I'm not saying that it's necessarily the amount of  
14 time we spent on it, but there was a substantial amount of time  
15 I spent both discussing with the parties the FCPA and the  
16 implications of *McDonnell* as well as thinking about it on my  
17 own.

18           Again, I think, on balance, I don't find that there's  
19 clear and convincing evidence that there's likely to be a  
20 reversal there and a new trial on that.

21           I understand the argument with regard to the money  
22 laundering counts, obviously, as it relates to the relationship  
23 between the unlawful activity alleged, both 666 and otherwise,  
24 but I don't see that there is a likelihood, again, with regard  
25 to the bribery -- excuse me, the money laundering charge as it

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1 relates to violation of foreign law that there is, again, clear  
2 and convincing evidence that that count will be reversed  
3 because, although I recognize there is some connection, I don't  
4 believe that it is such that that count will be reversed.

5 Just more globally, I think I may have alluded to this  
6 in my questioning, the proof, at least in my mind, the proof  
7 that the government would have put forward with regard to all  
8 of the counts, I think, would be, if not identical,  
9 substantially -- not materially different with regard to any of  
10 the six counts in light of what the other -- in light of the  
11 underlying facts here and the charges.

12 So, on that basis, I would deny defendant bail pending  
13 appeal.

14 Is there anything else that we need to deal with?

15 MR. ZOLKIND: Not from the government, your Honor.

16 THE COURT: All right. From the defense?

17 MR. GENSER: No, your Honor.

18 THE COURT: All right. Thank you very much.

19 It was a very good argument, and we'll stand  
20 adjourned.

21 (Adjourned)

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